95-533 (1)

Supreme Court, U.S.
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Case No. _____

In The Supreme Court Of The United States

October Term 1995

In Re RONALD BRANSON,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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September 22, 1995

85 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit Court of Appeals lacked jurisdiction and discretion to proceed in USCA Case No. 94-55332 under 28 U.S.C. §1291 as an impartial decisionmaker while the question of its impartiality remains pending under Title 28 U.S.C. §455(a).

2. Whether the Ninth Circuit Court of Appeals was empowered to enter the Opinion of August 1, 1995, and its subsequent Order of August 30 denying rehearing.

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Pursuant to USSC Rule 14.1(b) the parties to the proceeding in the court below are:

MICHAEL G. NOTT, personal capacity;
MORIO L. FUKUTO, personal capacity;
RAY L. HART, personal capacity;
JERRY K. FIELDS, personal capacity;
ESTELLA GUEVARA, personal capacity;
ZAHAVA STROUD, Attorney at Law;
MORRIS, POLICH & PURDY, a licensed lawfirm

There are no parent companies or subsidiaries.

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Parratt v. Taylor (1981) 451 U.S. 527 3,21,24

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United States v. District Court (1948) 334 U.S. 258 17

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REFERENCE TO OFFICIAL/ UNOFFICIAL REPORTS OF OPINIONS

United States Reports
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GROUNDS FOR JURISDICTION

(1) The the published Opinion of the Court of Appeals was filed August 1, 1995. Said Opinion is the product of usurpation of power by the court and the fallout from USSC No. 94-1956 docketed May 30, 1995, still pending before this Court. The merits of the published Opinion are not reached by this petition pending determination as required by law of the question of impartiality of the Ninth Circuit Court of Appeals under Title 28 U.S.C. §455(a) first raised in USSC No. 94-1956 before this Court under §1651 for corrective action. Plaintiff specifically brought to the Court of Appeal's attention, by a Petition for Rehearing, the scope of the pending question of its impartiality and its application to this and future Branson cases. Nevertheless the Court of Appeals, by further usurpation, let stand its Opinion, continuing to disregard the mandate of §455(a), denying without comment the Petition for Rehearing on August 30, 1995. Plaintiff submitted an Exception to that denial on September 2, 1995.

(2) The statutory provision which confers jurisdiction on this Court for this petition is Title 28 U.S.C. §1651(a).

AGAINST WHOM RELIEF IS SOUGHT

Pursuant to USSC Rule 20.3(a) petitioner states:

(1) Name and title of every person against whom relief is sought:

EDWARD RAFEEDIE, District Judge, U.S.Dist.Ct. (L.A.);
HERBERT Y.C. CHOY, Circuit Judge, Ct.of Apls (9th Cir);
OTTO R. SKOPIL, JR., Circuit Judge, Ct.of Apls (9th Cir);
WARREN J. FERGUSON, Circuit Judge, Ct.of Apls (9th Cir).

(2) The relief sought herein is not available in any other

court. The appeal remains suspended until the collateral issue of the proper procedure under Title 28 §455(a) regarding recusal of the Ninth Circuit is resolved by this Court, since the Ninth Circuit C/A refuses to identify and address the facts presented under the statute for recusal. That issue was initially brought to this Court in USSC No. 94-1956 and extends to this case as explained in the Preliminary Statement of the Petition for Rehearing.

The second question presented herein involves the collateral issue of usurpation of power by the Ninth Circuit in appellate procedure (not in decisionmaking) and is reached by this Court under §1651(a) after the threshold question regarding the procedure by the Ninth Circuit under §455(a) is decided and the question of impartiality of the Ninth Circuit pertaining to any of plaintiff's cases is resolved.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

Constitutional Provisions:

Article III, Section 2, Clause 2
Due Process Clause of the Fourteenth Amendment

Federal Statutes:

28 U.S.C. § 455(a)
28 U.S.C. §1343(a)(3)
28 U.S.C. §1651(a)
42 U.S.C. §1983

Code of Conduct for United States Judges
(pertinent portions)

[Pertinent texts not quoted in the petition are set forth in the Appendix]

STATEMENT OF THE CASE

Petitioner herein is referred to as "plaintiff" to conform to the record. "CR" is clerk's record in USDC No. CV 93-5967-ER; "BFA" is brief for appellant; "JAB" is joint appellees' brief; "APP" is Appendix (attached); "C/A" Court of Appeals, Ninth Circuit.

This petition is necessitated because of the fallout resulting from USSC Case No. 94-1956 currently pending which is explained in the Preliminary Statement of the Petition for Rehearing [APP A-17]. For clarification plaintiff refers to No. 94-1956 as *"Branson I"* and to this instant case (yet unnumbered) as *"Branson II."* The two cases, for purposes of this petition, are inextricably intertwined because of the collateral issue of the questioning of impartiality of the C/A in handling any "Branson" case since that question was formally raised by motion on 11/16/94 in USCA No. 94-55951 *(Branson I)* and not yet decided according to law.

The complaint in *Branson II* [USDC No. CV-93-5967 -ER] was filed 10/1/93 and assigned to District Judge Rafeedie [CR 1]. It names as defendants three state appellate court justices, one superior court judge, and a superior court default clerk, each in his/her personal capacity within the meaning of *Hafer v. Melo* (1991) 112 S.Ct. 358 [CR 1/ 2:6, 20, 3:6, 4:15], as well as an attorney and her lawfirm representing the county defendants in the underlying state action [LASC No. C643013; CCA Nos. B052261, B053009].

Branson II is taken under Title 42 U.S.C. §1983 requesting damages and prospective injunctive relief for violations of procedural due process under the *Ex parte Young* doctrine (209 U.S. 123, 160) [CR 1/ 2:14, 28, 3:13, 4:22] for the deprivation by state action under color of state law of a constitutionally protected interest in life, liberty and property ***without due process of law*** within the meaning of *Parratt v. Taylor* (1981) 451 U.S. 527, the third type of protection under the Due Process Clause of the Fourteenth Amendment as described in *Daniels v. Williams* (1986) 474 U.S. 327,

338-9 and *Zinermon v. Burch* (1990) 110 S.Ct. 975, 983. [CR 1/ 5:3-11]. (Latter now cited as 494 U.S. 113).

Plaintiff alleged that he is challenging the adequacy, appropriateness, and fairness of the state post-deprivation process itself ***as it was carried out in the underlying state tort action and the appellate process thereof,*** which prevented redress of the deprivation. [CR 1/ 5:11-16]. (emph. added). Also, plaintiff specifically alleged that the state processes and procedures themselves are fundamentally flawed [CR 1/ 5:24-26] --i.e., flawed by practice "as [they were] carried out," but not in theory. Plaintiff nowhere alleges inadequacy of state law on the books. Therefore, reading the complaint as a whole, it is clear plaintiff is **not** challenging state law *per se*.

Plaintiff alleged that he is invoking ***original jurisdiction*** [emph. in orig.] of the district court under Title 28 U.S.C. §1343(a)(3) for violations of ***procedural due process*** [emph. added], and under Title 28 U.S.C. §1331 on the federal question. [CR 1/ 5:20-24]. In the abundance of caution, plaintiff also specifically alleged that he is ***not*** [emph. in orig.] seeking review of any court decision based on error within the meaning of the *Rooker-Feldman* doctrine. [CR 1/ 5:26-28]; also, that federal jurisdiction is ***not*** barred by the Eleventh Amendment (citing *Ex parte Young, (supra)* and *Quern v. Jordan* (1979) 440 U.S. 332, 337. [CR 1/ 5:28 - 6:4].

The defendants filed motions to dismiss under Rules 12(b)(1) and 12(b)(6) which plaintiff opposed. Hearing was before Judge Rafeedie on 1/31/94. As the transcript shows, the judge wasn't interested in plaintiff's argument regarding *Zinermon* upon which the complaint was based; the judge cut him off from argument [APP A-40] and, despite plaintiff's reliance on *Zinermon* as a procedural due process claim, proceeded to dismiss the complaint on the theory of a "conspiracy claim" as suggested by defendant Stroud of Morris, Polich & Purdy in their motion to dismiss [CR 12/ 18:6 - 19:15] without hearing argument from plaintiff on that issue [APP A-37]. The order of dismissal was entered 3/1/94

citing *Wilson v. Garcia*, 471 U.S. 261 (1985) for the statute of limitations bar [CR 29/ 1:23-25] and ordered plaintiff to pay defense attorneys' fees as also suggested by defendant Stroud, for a frivolous complaint and abuse of the judicial process. [CR 29/ 1:27 - 2:5].

An amended notice of appeal was filed 3/2/94 and the Brief for Appellant ("BFA") was mailed to the C/A 6/23/94 presenting three issues on appeal: (1) Whether the theory of plaintiff's case was established as a matter of law; (2) Whether it was established as a matter of law that the statute of limitations bars plaintiff from bringing this action under Title 42 U.S.C. §1983; and (3) Whether plaintiff's filing of the complaint is frivolous and an abuse of judicial process warranting payment of defendants' attorney fees. [BFA 1:2-8].

A Joint Appellees' Brief ("JAB") was served 8/10/94, defense counsel ***reconstructing*** plaintiff's issues on appeal as follows: (1) Did the district court have jurisdiction to entertain plaintiff's attack on the earlier state court judgment? (2) Was plaintiff's complaint timely filed? and (3) Were sanctions properly awarded to compensate some appellees for the costs expended in defending against plaintiff's baseless claims? [JAB 8:6-9]. Besides supporting the judge's dismissal on the basis of the statute of limitations bar and the imposing of sanctions against plaintiff, defense counsel added the issue of the jurisdictional bar under the *Rooker-Feldman* doctrine (referred to as ***"Feldman"*) *subverting plaintiff's first issue on appeal by conversion*** and urging their version on appeal.

Defense counsel took it upon themselves to convert the first issue on appeal into **something other than what it is** --yet another trick and design to thwart plaintiff's rights, and one that was "sure bait" for the C/A to nab. Indeed, the C/A took the bait and based its Opinion wholly on that converted version, ignoring altogether the true issue presented by plaintiff.

Plaintiff responded to that tactical maneuver in his Reply Brief ("RB") which was served 8/23/94, stating: "This first

argument in the JAB [p.8] arises out of defense counsel's re-writing of plaintiff's issues on appeal [JAB 8:5-9], to which plaintiff objects. It is the ***appellant*** who presents the issues on appeal and who has the liberty and property interest in having ***his issues*** addressed. These defendants waived their right of cross-appeal and therefore are not entitled to present their own issues on appeal. ¶The first issue on this appeal is 'Whether the theory of plaintiff's case was established as a matter of law.' [BFA 1:2-3]. Whether plaintiff is attacking a state court judgment is but ***one aspect*** going to the question of the theory of this case and it's currently in dispute! Defense counsel puts words in plaintiff's mouth by stating 'plaintiff wants his adverse state court judgment reversed by the federal courts.' [JAB 8:17]. What plaintiff 'wants' is presented in his argument on appeal, entitled 'The theory of plaintiff's case, as set forth in the complaint, has been disregarded by the district court.' [BFA 12:13-14]. ¶Also in attempting to speak for plaintiff, defense counsel re-states the first issue on appeal as '[D]id the district court have jurisdiction to entertain plaintiff's attack on the earlier state court judgment?' [JAB 8:6-7]. Such question is ***moot,*** since plaintiff is **NOT** attacking an earlier state court judgment in this lawsuit. The complaint specifically states plaintiff is not seeking review of a state court decision [CR 1/ 5:26] and the fact that defendants dispute this 'disclaimer' [JAB 9:20] shows that it must be adjudicated on the evidence. Further, that issue was neither addressed by the district court nor made part of the dismissal order, as acknowledged by defendants [JAB 11:11-12]. However, before this court 'may affirm the judgment on this ground' (i.e., 'that the lower court lacked subject matter jurisdiction') as suggested by defendants [JAB 11:10-13], the existing argument between the parties must be resolved, with the intent of the plaintiff controlling." (emph. in orig.) [RB 3:18 - 4:14].

After defense counsel thwarted plaintiff's first issue on appeal and put words in plaintiff's mouth, as aforesaid, what does the C/A do? It ***totally ignored*** plaintiff's first issue on

appeal and followed the script provided by defense counsel in the JAB to a "T" stating, "We may affirm the decision of the district court on any basis which the record supports. (citation). We find that dismissal of Branson's complaint was required because the district court lacked subject matter jurisdiction over his purported §1983 claim. ¶Whether subject matter jurisdiction exists is a question of law. (citation). As courts of original jurisdiction, federal courts have no authority to review the final determinations of a state court in judicial proceedings (citing *Feldman* and its progeny, *Worldwide*). This is true even when the challenge to a state court decision involves federal constitutional issues. (again citing *Feldman* and *Worldwide).* ¶Notwithstanding his protestations to the contrary, Branson's §1983 claim amounts to nothing more than an impermissible collateral attack on prior state court decisions. (citing *MacKay*, another progeny of *Feldman*). ..." [APP A-11]. **None of that is supported by the record!** *Zinermon* wipes it out.

This appeal *(Branson II)* proceeded in a normal fashion through the usual procedure of inviting the parties to present a statement setting forth reasons why oral argument should be heard, which was done 9/9/94. The last communication in this case, before the Opinion was filed 8/1/95, was plaintiff's Statement For Oral Argument timely served and mailed on 9/17/94. Plaintiff therein listed twenty (20) disputes that had to be settled before a decision could be made and urged the importance of oral argument because of the unresolved factual disputes. [APP A-42].

Meanwhile approximately one month later, on 10/12/94, before the C/A decided the matter of oral argument in *Branson II*, plaintiff filed his appellate brief with the C/A in *Branson I* which names three Ninth Circuit judges and a district judge as defendants, requesting in the opening paragraph of the brief that the Ninth Circuit C/A recuse itself because of the unethical and unorthodox way in which the case was handled in district court, as well as the fact that three of

the defendants were colleagues of those who would be deciding that appeal. (See USSC No. 94-1956). The C/A was then on notice that plaintiff was questioning its impartiality, although a motion had not then been filed.

Plaintiff heard nothing in *Branson II* for an extended period of time after submitting his request for oral argument 9/17/94, presumably because the C/A was not going to act until the §455(a) issue, brought in *Branson I*, was settled. *Branson II* was submitted without oral argument, without plaintiff's knowledge, on 11/14/94. Two days thereafter, plaintiff filed a formal motion for recusal of the Ninth Circuit C/A in *Branson I* because of further improprieties occurring on the record in that case. The shocker came 12/9/94 when the C/A affirmatively refused on the record to recuse itself in *Branson I* and, by so doing, effectually "declared war" against plaintiff.

After five more months of compounded judicial misconduct in *Branson I* (see the petition in USSC No. 94-1956 describing it), plaintiff filed the Petition for Writ of Certiorari under §1651 presenting the question "Whether the Ninth Circuit Court of Appeals lacked jurisdiction and discretion to proceed with the appeal under 28 U.S.C. §1291 in USCA Case No. 94-55951 after failing and refusing to identify and address the facts that might reasonably cause an objective observer to question its impartiality in the handling of said appeal, brought by motion under Title 28 U.S.C. §455(a)."

Plaintiff therein stated, "That order (Dec. 9) is the order in respect of which the writ is sought herein (see USSC Rule 20.3(a)) ***--all subsequent actions*** by the Ninth Circuit beyond §455 procedural mandates being without jurisdiction, and therefore bogus, null and void and irrelevant surplusage, compounding the problems that already exist and remain unaddressed by the Ninth Circuit court to this day." (emph. in orig.) [Petn p.8]. Also, "Clearly the C/A did not follow proper procedures in deciding the §455(a) motion. The court didn't 'decide' the motion at all --it ***evaded*** the motion! "**Denied**" does not dispose of the motion: "**denied**" does not 'identify

the facts that might reasonably cause an objective observer to question impartiality;' "**denied**" does not 'evaluate all the relevant facts relating to the question of an appearance of partiality.' The fact is that the C/A refused to exercise its mandatory jurisdiction under §455(a) altogether; the motion still remains pending and undetermined under the law." (emph. in orig.) [Petn p.24]. Obviously, denial of that petition by this Court would not resolve the matter. The entire judicial process involving *Branson* in any case before the Ninth Circuit C/A has ground to a halt until the §455(a) issue is resolved.

Plaintiff was jolted when he received the Opinion filed 8/1/95 in this case *(Branson II)*. To preserve all evidence on the record regarding this pending matter, plaintiff wrote a "Preliminary Statement" to the Petition for Rehearing which was timely served 8/14/95, bringing the §455(a) matter to the attention of the current panel of the C/A, to counsel of record, to this Court, to the Judicial Conference of the U.S., and to certain members of Congress. [APP A-17].

Therein plaintiff stated, "This is the same 'Ninth Circuit Court of Appeals,' writing this ***published*** opinion, as is under attack by plaintiff to the U.S. Supreme Court.... Is there any reason to expect honesty and integrity on the part of the 'Ninth Circuit' this time? Obviously not, however the instant case existed ***prior to*** the time of plaintiff's questioning this court's integrity on the record. Because this court delayed its decision in this case for almost a year, until well after plaintiff first officially placed that integrity into question by filing his motion for recusal of the Ninth Circuit Court on 11/16/94 in USCA No. 94-55951, that taint has fully engulfed this case and the Ninth Circuit's 'Opinion' herein. Plaintiff, in this instant case, has become vulnerable to a sinister plot which the Ninth Circuit was bound to take in retaliation to Case No. 94-55951, and that's exactly what has developed here. Ever since plaintiff placed this court's impartiality formally into question, it was legally required to recuse itself in that case (94-55951). Ethically and morally it should remove itself from ***any further***

handling of plaintiff's cases-- including this one. But, of course, it won't because it is **in fact** partial as is evidenced by its conduct. The Ninth Circuit Court, as a leopard, is as incapable of changing its spots for this particular case as it could for any other case involving plaintiff in the future. When the Ninth Circuit affirmatively refused to recuse itself on 12/9/94 in Case No. 94-55951, it effectually 'declared war' upon plaintiff. In publishing the instant decision, it determined to make its declaration of war against plaintiff open for all the world to see. Plaintiff **cannot any longer** (since 12/9/94) expect fair and impartial treatment by the Ninth Circuit in **any** case." (emph. in orig.) [Petn/Reh pp ii-iii] (See APP A-19,20).

Plaintiff was not surprised to receive "The petition for rehearing is DENIED" filed 8/30/95 [APP A-2]. Again, to protect the integrity of the record, plaintiff served and mailed on 9/2/95 an Exception to the Denial of Petition for Rehearing [APP A-32] in which plaintiff concluded, "The Order filed 8/30/95 setting forth 'The petition for rehearing is DENIED' is but another utterance from the same 'leopard' whose integrity is already under question before the U.S. Supreme Court and Congress. As plaintiff stated in his conclusion of USSC No. 94-1956: 'Courts must be made to expand their vocabulary beyond the word "denied." ' (*Id.* p.29). Nothing has changed-- ***nothing has been resolved!***" (emph. in orig.) [APP A-34].

As the final swipe of its claw, the same "leopard" filed the following Order on 9/11/95: "The panel has decided to award costs to Appellees." [APP A-16]. ***Not on this record!***

* * *

ARGUMENT

1. The Ninth Circuit Court of Appeals did not have jurisdiction to proceed with this appeal (Branson II) in the absence of identifying and evaluating the facts questioning its impartiality in the Motion for Recusal under Title 28 U.S.C. §455(a) presented in Branson I.

The argument in the previous petition *(Branson I)*, equally applicable here, begins with: "'Power corrupts, and absolute power corrupts absolutely.' As the previous factual synopsis shows, and as the record itself reflects, the judicial system is way out of control-- it doesn't work! It has become a public disgrace! Plaintiff (petitioner herein) has been seeking a judicial remedy for his petition of grievances for eight solid years, and to date, not one of his federal questions has been addressed by the courts. Facts presented are either ignored altogether or are twisted beyond recognition and conclusions are based on those false representations. Words and intents are placed in plaintiff's mouth by the opposition, and the courts readily adopt it as truth. The courts routinely misinterpret plaintiff's documents and then treat them according to their misinterpretation. Procedures that could not be taken under law, according to the facts of the case, are arbitrarily declared by the courts as having been taken-- and then fraudulently denied under that pretense. Plaintiff's real opponents are the **federal judiciary** who are unaccountable, arbitrary, arrogant, dishonest, and treasonous.... ¶Constitutional provisions and safeguards are ignored; cited case law even by the U.S. Supreme Court is ignored; federal statutes are ignored; federal rules are ignored." [USSC No. 94-1956, Petn pp 13-14].

While *Branson I* is the result of ***two complete rounds*** through the federal judicial system attempting to obtain a

judicial remedy for eight solid years in his federal case, this case *(Branson II)* is the result of attempting to obtain a judicial remedy for the same length of time in his state tort action against the county and sheriff defendants, after going through a complete round in the state judicial system followed by a complete round in the federal system bringing it to this point.

Plaintiff's other state tort action which was filed against the city and police defendants is best identified for purposes of this petition as the *"HABER appeal."* That case too has been blocked by the federal judicial system after this Court denied certiorari in USSC Case No. 94-610 on 11/28/94, leaving the case hanging in limbo without a legal conclusion to this day. That status has been made part of the record in the district court (USDC No. CV 92-3544-LGB) when plaintiff filed on 1/13/95 a post-judgment declaration (1) giving notice of in-limbo status (no legal conclusion) of [that] federal case, (2) giving notice of non-waiver of rights under the U.S. Constitution and laws of the United States, and (3) giving notice of right to pursue further action. That declaration is set forth in the Appendix at APP A-45 et seq.

This Court is now able to see the pattern that has developed with the federal judicial system. The C/A closes out plaintiff's cases on false premises and conclusions arrived at while routinely ignoring plaintiff's issues:

First, in the *HABER appeal*, the C/A closed out that case on the false premise that the underlying state action is "on-going" and that the state judge had "set[ ] aside a default judgment" which premise could not be formed in light of plaintiff's issue presented, to wit, his statutory right under California Code of Civil Procedure §585(b). The record shows that ***there was no default judgment*** to set aside; that Judge Haber refused to render the judgment which was due under CCP §585(b), thus blocking plaintiff's ability to proceed in the case. The case couldn't be "on-going" under the circumstances shown. Plaintiff couldn't even take an appeal in state court because the judgment on which to appeal wasn't forthcoming.

Those facts were presented and argued throughout the federal courts and ultimately presented to this Court in USSC No. 94-610. However, the courts ***totally ignored plaintiff's issue*** regarding CCP §585(b) and certiorari was denied; nothing has been resolved in that case to this day.

Second, in the instant case *(Branson II)* presented by this petition, the C/A foreclosed the remedy on the false premise that plaintiff was attacking prior state court decisions, thus falsely concluding that the federal court lacked jurisdiction under the *Feldman* doctrine. However, the courts ***totally ignored plaintiff's first issue on appeal*** which sets forth the true theory of this case, being a procedural due process claim based on *Zinermon* for which the jurisdiction of the federal court is justified by statute invoked by plaintiff.

Third, this entire abusive train comes to a grinding halt as the result of *Branson I* presented in USSC No. 94-1956. The merits of none of these judicial abuses are reached unless and until the question of the impartiality of the Ninth Circuit Court of Appeals dealing with ***any*** of plaintiff's cases is decided pursuant to the mandate of Title 28 U.S.C. §455(a) as defined and established by this Court in *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865. "The law, as it now stands, requires that the C/A at a minimum ***must*** 'identify the facts that might reasonably cause an objective observer to question impartiality' whether or not it can or will be done fairly --it must be done." [USSC No. 94-1956, Petn. p.24]. That requirement hasn't changed for this case *(Branson II)* nor for any other Branson case.

After stepping aside time and time again, it is critical that this Court not do so again. It must take corrective action under its supervisory power if the judicial process is to remain viable as a credible institution in this country. It is mandatory that courts are made to address the record --all of it-- including issues and argument presented by a plaintiff who is seeking redress of grievances against the government. They cannot be ***ignored!***

Unfortunately, the federal courts are part of that "government" causing the grievances. "Courts are going to have to be held accountable for their actions; facts as presented must be accurately addressed and findings made; court documents must be considered as what they actually are and clearly intended to be-- not as something else into which they are converted by judicial fiat to avoid the issues. Courts must be made to expand their vocabulary beyond the word 'denied.'" [USSC 94-1956, Petn p.29]. That certainly applies here to *Branson II*.

"Society has become restless due to arbitrary government out of control. 'The touchstone of due process is protection of the individual against ***arbitrary action of government.***' [emph. added] *Dent v. West Virginia* (1889) 129 U.S. 114, 123 (citing *Wolff v. McDonnell* (1974) 418 U.S. 539, 558)." [USSC 94-1956 Petn. p.29]. Plaintiff wonders if the courts are capable, due to their corrupt nature, of providing that protection for the individual. When courts are the ***enemy***, how can they protect us? Nevertheless, plaintiff continues to plow through the sea of judicial corruption, as he must, until some other way to pursue justice opens up. This Court is now the last harbor available in that sea of corruption. It must act!

As USSC Rule 10.1(a) states, this Court will consider the matter "[w]hen a United States court of appeals has... so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision." The legal argument here is the same as that in *Branson I*.

Plaintiff again seeks relief from this Court under 28 U.S.C. §1651(a). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). See also *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661 (1978); *Kerr v. United States District*

Court for Northern District of California, 426 U.S. 394, 402 (1976); *Will v. United States*, 389 U.S. 90, 95 (1967)." *Mallard v. United States District Court* (1989) 490 U.S. 296, 308. "[T]he writ 'has traditionally been used in the federal courts only to "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." ' *Will v. United States*, (1967) 389 U.S. 90, 95, quoting *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943)." *Kerr v. United States District Court* (1976) 426 U.S. 394, 402. "And, while we have not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of 'jurisdiction,' *Will v. United States, supra*, at 95, the fact still remains that 'only exceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy.' *Ibid.*" *Kerr*, p.402.

The exceptional circumstances here, as it is in *Branson I*, is the judicial usurpation of power by the C/A, assuming the role as a decisionmaker in this appeal while the question of its qualification and integrity is still pending and unresolved in *Branson I*. "After plaintiff filed No. 94-55951 ('FLETCHER appeal') *[Branson I]* with the Ninth Circuit on 10/12/94, which names three of their own circuit judges and a district judge as defendants, Judge Choy and his colleagues decided to wait that one out before making its strategic move, using the NOTT appeal *[Branson II]* as its 'trump card' in retaliation for plaintiff's exposure of their 'brethren' showing the lack of integrity, credibility, and impartiality arising from several improprieties appearing on the record in FLETCHER *[Branson I]*." [APP A-20]. The C/A proceeded with "blood on its hands" metaphorically speaking; there are still numerous acts of impropriety carried out by the C/A yet to be addressed and accounted for in *Branson I* which must be done before it can act to further destroy plaintiff in *Branson II*. The C/A is not only recommending Rule 11 sanctions against plaintiff on remand, but it has also imposed costs against plaintiff.

Relief is not available from any other court. The end of the line has been reached in the judicial system of redress. The *HABER appeal*, discussed above, is ripe for another *Bivens/ Larson* action against the district court magistrate and judge, as well as the three circuit judges, each in his/her personal capacity, similar to the theory of the *Branson I* case (see USSC 94-1956, Petn p.3) for those judges having failed to address the federal question presented by plaintiff in that case and this Court having once again stepped aside from that petition [USSC No. 94-610]. That case has been left in limbo, but where can plaintiff take it now to have his issues addressed? The state courts cover up for law enforcement defendants, and the federal courts cover up for the state court defendants, as well as for their own federal court defendants. "As plaintiff stated, 'Plaintiff's real opponents are the **federal judiciary**...' of which the Ninth Circuit sits at the head of the table-- they have the power not only to destroy plaintiff's federal case of which USSC No. 94-1956 is the culmination after eight years, but also the power to destroy plaintiff's state actions, of which the instant NOTT appeal *(Branson II)* is just one case-- another one equally destroyed is the *HABER appeal* (USCA No. 93-56696) [USSC No. 94-610] mentioned in the footnoting of the Choy 'Opinion.'" [APP A-20].

This destruction takes place routinely by the C/A creating bogus facts (usually from the "script" provided by defense counsel in their briefs or moving papers which the courts follow religiously) despite the facts alleged by plaintiff in the complaint, and then fashioning a bogus conclusion based on the bogus facts; isolated bits and pieces from the record are quoted and taken out of context to smear and belittle plaintiff's integrity, while ***ignoring*** entire portions that are relevant in their proper context as was done in *Branson II*. Whenever plaintiff objects and takes further action to redress those improprieties, he is met with phrases such as "notwithstanding his protestations to the contrary" this is the way it is (based on the lie, of course), as in *Branson II*. In plain language, the C/A

is saying "notwithstanding **the record** to the contrary ...." The ***truth behind*** those "protestations" is never revealed or discussed by the court. This is organized crime of the highest order! It is financed by public funds which will ultimately destroy this country from within by unchecked power! The evidence is on the record-- it's high time that it is dealt with by disciplined courts acting within their prescribed jurisdictions.

The writ will be in aid of the Court's appellate jurisdiction. "The supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction." *Marbury v. Madison, supra,* 5 U.S. at 67. (Article III, Sec. 2, Clause 2, U.S. Constitution.) "It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that case." *Marbury* p.68. "[T]he power to issue the writ under [§1651(a)] is not limited to cases where its issue is required in aid of a jurisdiction already obtained, but that 'where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below.' " (quoting *McCllellan v. Carland* (1910) 217 U.S. 268, 280.) *Ex parte United States* (1932) 287 U.S. 241, 246. "That power [under §1651(a)] protects the appellate jurisdiction which might be otherwise defeated and extends to support an ultimate power of review, though it not be immediately and directly involved. *McClellan v. Carland,* 217 U.S. 268; *Ex parte United States,* 287 U.S. 241, 246." *United States v. District Court* (1948) 334 U.S. 258, 263.

2. The Ninth Circuit Court of Appeals was not empowered to enter the Opinion filed August 1, 1995, nor its subsequent Orders of August 30 and September 11.

"[W]hen a court has no judicial power to do what it purports to do --when its action is not mere error but usurpation of power-- the situation falls precisely within the allowable use

of [§1651(a)]. We proceed, therefore, to inquire whether the [lower court] is empowered to enter the order under attack." *DeBeers Mines v. United States* (1945) 325 U.S. 212, 217. Three orders are here involved.

It is plaintiff's contention that this question is not even reached until the threshold issue regarding the impartiality question under §455(a) has been resolved as required by law. The scope of that question presented in *Branson I* and continuing here in *Branson II* embraces the entire Ninth Circuit Court due to the nature and scope of the improprieties and conflicts of interest involved. If it is found that the C/A is not qualified to act in the *Branson* matters, the question of its empowerment to do what it purports to do is moot.

Plaintiff further contends that the action taken by the C/A as a decisionmaker in *Branson II* was an act of retaliation for plaintiff's actions in *Branson I*. Because this act of retaliation doesn't end here, but extends to remanding the case to the district court for its consideration of imposing Rule 11 sanctions against plaintiff for what the C/A purports to be a frivolous complaint, as well as awarding costs to appellees (expecting plaintiff to pay, of course), a closer examination of the C/A's actions in coming to that conclusion is presented here. The record shown does **not** support such conclusion.

First of all, it must be kept in mind that the courts, and especially the C/A, have shown themselves to be plaintiff's ***enemy*** by their arbitrary actions, repeatedly throwing out plaintiff's cases based on fabricated theories routinely lacking in support from the record. "Plaintiff's real opponents are the **federal judiciary,** of which the Ninth Circuit sits at the head of the table." [APP A-20].

Secondly, it must also be kept in mind that according to law, the C/A is currently ***disqualified*** from acting in any of Branson's cases since, to date, it has failed and refused to identify and discuss the facts causing plaintiff to question its impartiality as it must do under the statute as established by this Court in *Liljeberg*. Plaintiff has no more confidence in the

C/A in this case *(Branson II)* than he had when first presenting the question in *Branson I*. Therefore, plaintiff can place no confidence in the Opinion of August 1st nor in any further orders or action, including costs or sanctions, coming from it until the court's credibility and integrity are restored and the C/A begins to act according to law.

The *Mallard* case, cited *supra*, states, "The traditional use of the writ... has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." 490 U.S. at 308. Based on *Mallard*, the C/A is empowered to act only within its prescribed jurisdiction, and **within** that prescribed jurisdiction ***it must act.*** That, it has **not** done!

It is hornbook law and a "given" that the prescribed jurisdiction for appellate courts on questions of law, such as the question of jurisdiction of the district court, is *de novo* review of the facts and evidence shown on the record below. Here the C/A failed to exercise that jurisdiction, and without doing so, was not empowered to enter the Opinion of 8/1/95, nor hence, any of its subsequent orders based thereon. Regardless of the fact that defense counsel replaced plaintiff's first issue on appeal with its own version of what that issue should be, it was still the duty of the C/A to review all of the evidence *de novo* before making its decision. Absent such review, the resulting Opinion is void and a nullity, as are the orders of August 30 and September 11. This Court must now compel the C/A to exercise that authority --if and when it is first determined that the C/A is qualified to act at all herein. Whatever the tribunal, that appellate duty must be performed.

The Opinion of 8/1/95 is yet another violation of procedural due process by the federal judiciary, violating plaintiff's statutory right to a judicial remedy in federal court. Again, it's a question of the way appellate jurisdiction is not implemented by Judges Choy, Skopil, and Ferguson, and has nothing to do with the law itself, as *Zinermon* points out. Is this going to necessitate another round of litigation in this case too? Of

course, the C/A doesn't care about that since there's actually no impartial forum in this jurisdiction in which plaintiff may bring that federal claim. Is it feasible that the district court in Los Angeles or the Ninth Circuit C/A would or could be an impartial decisionmaker in such a case? The question is rhetorical, but it shows that the judicial system has become entangled in its own web! "Oh, what a tangled web we weave when first we practice to deceive."

All the judicial pollution from the past eight years has washed up on the steps of the Supreme Court. And it's getting deeper and smellier all the time. The Opinion of 3/1/95 is part of that pollution as will be any further action coming out of it.

The evidence on record, which must be given *de novo* review, reveals the following:

The first issue on appeal presented by plaintiff, totally ignored by the C/A, which itself requires *de novo* review of the record, is: "Whether the theory of plaintiff's case was established as a matter of law." [BFA 1:2-3]. In an attempt to evade the requirement of *de novo* review, defense counsel, in writing the script for the C/A to follow (which the court **did**), converted plaintiff's issue into their own version, to wit: "Did the district court have jurisdiction to entertain plaintiff's attack on the earlier state court judgment?" [JAB 8:7-8]. Defense counsel's version ***presumes*** the fact that plaintiff is attacking the state court judgment (presumes facts not in evidence), whereas the record shows that there is a ***dispute*** about that fact which must be tried on the evidence. Plaintiff pointed that out in detail in his Reply Brief [RB 3:18 - 4:14]. Also, that dispute was among the twenty brought to the attention of the C/A by plaintiff in his Statement For Oral Argument [APP A-42]. Despite those disputes shown on the record, the C/A denied oral argument on 11/14/94 [APP A-3].

Additionally, the complaint specifically alleges that plaintiff is **not** seeking review of a state court decision [CR 1/5:26] and the fact that defendants ***dispute*** this "disclaimer" [JAB 9:20] shows that it is not settled as a matter of law.

BEST AVAIL

Plaintiff alleges that his §1983 claim is a procedural due process claim under the *Zinermon* theory [CR 1/ 5:3-16, 22-23], however neither the district court judge nor the C/A allowed plaintiff to be heard on that disputed issue. (See Rep. Trans. APP A-37; also Petn/Reh. APP A-23).

"[T]he plaintiff is absolute master of what jurisdiction he will appeal to.... [J]urisdiction generally depends upon the case made and relief demanded by the plaintiff." *United States v. Mottaz* (1986) 476 U.S. 834, 850 (quoting *Healy v. Sea Gull Specialty Co.* (1915) 237 U.S. 479, 480). Plaintiff alleges: "The ***original jurisdiction*** of the federal District Court is invoked under Title 28 U.S.C. §1343(a)(3) in seeking the relief...." (emph. in orig.) [CR 1/ 5:20-22]. There is conferred upon plaintiff a federal statutory right to the benefit of original jurisdiction in District Court: "The district courts shall have original jurisdiction of any civil action authorized by law [i.e., Title 42 §1983] to be commenced by any person: ... (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States...." *Hagans v. Lavine* (1974) 415 U.S. 528, 535-536.

The relief sought is alleged as follows: "Plaintiff hereby seeks federal injunctive relief and damages under Title 42 U.S.C. §1983, for the deprivation by state action under color of state law of a constitutionally protected interest in life, liberty and property ***without due process of law*** within the meaning of *Parratt v. Taylor* (1981) 451 U.S. 527, the third type of protection under the Due Process Clause of the Fourteenth Amendment as described in *Daniels v. Williams* (1986) 474 U.S. 327, 338-9 and *Zinermon v. Burch* (1990) 110 S.Ct. 975, 983." (emph. in orig.) [CR 1/ 5:3-11].

Zinermon [494 U.S. 113] states, "The Due Process Clause also encompasses a third type of protection, a guarantee of fair procedure. *[Is that possible with the C/A or even the*

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district court in Los Angeles?] A §1983 action may be brought for a violation of procedural due process,.... In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law.*" (emph. in orig.) 494 U.S. at 125.

Zinermon further provides: "In *Monroe*, this Court rejected the view that §1983 applies only to violations of constitutional rights that are authorized by state law, and does not reach abuses of state authority that are forbidden by the State's statutes or Constitution or are torts under the State's common law. It explained that §1983 was intended not only to 'override' discriminatory or otherwise unconstitutional state laws, and to provide a remedy for violations of civil rights 'where state law was inadequate,' but also to provide a federal remedy 'where the state remedy, though adequate in theory, was not available in practice.' 365 U.S., 173-174." *Zinermon, supra,* 494 U.S. at 124. "...[I]n many cases there is 'no quarrel with the state laws on the books,' ...instead, the problem is ***the way those laws are or are not implemented by state officials.***" (emph. added) *Id.* p.125.

Specific facts alleged in the complaint, under the *Zinermon* theory cited above, are: "That on February 19, 1992, defendant MICHAEL G. NOTT, acting *ultra vires* state authority and under color and pretense of state law, while carrying a badge of authority as a Justice of the California Court of Appeal, failed and refused to give appellate review to the issue of the required entry of default of Dwight Smith... to which plaintiff was statutorily entitled...." [CR 1/ 21:6-12]. Also, using the same language, the complaint further alleges that defendant "...failed and refused to give appellate review to the ruling on demurrer... to which plaintiff was statutorily entitled...." [CR 1/ 23:24 - 24:1]. That factual evidence was extensively briefed on appeal and repeated in the Reply Brief.

"The very purpose of §1983 was to interpose the federal

courts between the States and the people, as guardians of the people's federal rights, to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.' *Ex parte Virginia*, 100 U.S. at 346. In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in §1983 actions, by expressly authorizing a 'suit in equity' as one of the means of redress..." *Mitchum v. Foster* (1972) 407 U.S. 225, 242. [Is the C/A capable of being a guardian of plaintiff's federal rights against the state? Can plaintiff expect the C/A to issue injunctive relief to protect those rights? Based on the facts and circumstances shown in *Branson I* and *Branson II*, could a person reasonably question that capability of the C/A?]

"[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the 14th Amendment forbids the State to do." *Bell v. Hood* (1946) 327 U.S. 678, 684. [Is the C/A apt to do that in **any** "Branson" case?]

"[I]t is... well settled that where legal rights have been invaded, and a federal statute [e.g., §1983] provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done (citing *Bell v. Hood*, 327 U.S. at 684)." *Davis v. Passman* (1979) 442 U.S. 228, 245. "[W]here federally protected rights have been invaded ... courts will be alert to adjust their remedies so as to grant the necessary relief." (citing *Bell* at p.684). *Duke Power Co. v. Carolina Env. Study Group* (1978) 438 U.S. 59, 71. [Is the C/A apt to even recognize that Branson has any federally protected rights, let alone grant necessary relief for their invasion? How many of plaintiff's rights has the C/A invaded? Is it reasonable for plaintiff to look to the C/A for protection?]

"Once a constitutional violation is found, a federal court is ***required*** to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.' *Milliken v. Bradley* (1974) 418 U.S. 717, 744; *Swann v. Charlotte-Mecklenburg*

Board of Educ. (1971) 402 U.S. 1, 16" (citing *Hills v. Gautreaux* (1976) 425 U.S. 284, 293-294). *Dayton Board of Educ. v. Brinkman* (1977) 433 U.S. 406, 419-420. [emph. added]. "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann, supra,* 402 U.S. at 15. [Is the C/A likely to find any constitutional violation in Branson's case, much less tailor any remedy?]

The evidence, and the law applicable thereto, shows:

(1) Plaintiff has the right to decide what jurisdiction to invoke in district court. *United States v. Mottaz* 476 U.S., 850

(2) Plaintiff invoked the original jurisdiction of the district court under Title 28 U.S.C. §1343(a)(3) as well as under Title 28 U.S.C. §1331. [CR 1/ 5:20-23].

(3) The complaint alleges that plaintiff is seeking federal injunctive relief and damages under Title 42 U.S.C. §1983. [CR 1/ 5:3-4].

(4) 28 U.S.C. §1343(a)(3) confers a statutory right to the benefit of original jurisdiction in district court for a civil action authorized by §1983. *Hagans v. Lavine* 415 U.S., 535-536.

(5) Congress has conferred a statutory right to a federal remedy for a violation of procedural due process under §1983. *Zinermon v. Burch* 494 U.S., 125.

(6) A procedural due process claim under §1983 is the deprivation by state action of a constitutionally protected interest in "life, liberty, or property" *without due process of law. Zinermon,* p.125.

(7) Plaintiff has alleged that he is seeking relief under §1983 for the deprivation by state action under color of state law of a constitutionally protected interest in life, liberty and property ***without due process of law*** within the meaning of *Parratt v. Taylor, Daniels v. Williams,* and *Zinermon v. Burch.* [CR 1/ 5:4-11].

(8) §1983 intended to provide a federal remedy "where the state remedy, though adequate in theory, was not available

in practice" meaning that "the problem is the way [state] laws are or are not implemented by state officials." *Zinermon* at pp 124-125.

(9) Plaintiff alleged two factual instances of being denied state appellate review by state officials of issues he presented, to which he was statutorily entitled under state law. [CR 1/ 21:6-12; 23:24 - 24:1].

(10) §1983 authorizes suits for injunctive relief. *Mitchum v. Foster* 407 U.S., 242; *Bell v. Hood* 327 U.S., 684.

(11) Plaintiff alleges that he is seeking federal injunctive relief under §1983. [CR 1/ 5:3-4].

(12) Jurisdiction of federal courts to issue injunctions under §1983 will be sustained. *Bell v. Hood*, 327 U.S. at 684.

(13) The first issue on appeal presented by plaintiff is: "Whether the theory of plaintiff's case was established as a matter of law." [BFA 1:2-3].

The C/A has failed to give *de novo* review of the facts and evidence on the record in this case; the Opinion of 8/1/95 bears no relation nor relevance to the evidence; therefore the C/A was ***not empowered*** to enter it. As noted above, plaintiff questions the capability of the C/A to impartially carry out its duty within its prescribed jurisdiction in this, or ***any*** Branson case.

By the same token, the C/A was ***not empowered*** to enter its subsequent Orders of 8/30/95 and of 9/11/95. See page 1 *ante* and the first argument (p.11).

CONCLUSION

The federal judiciary instigated this judicial war against plaintiff by repeatedly denying the law with impunity, finally coming to a head after eight years when the C/A, in further defiance of law, flat-out ***refused*** to recuse itself or to even identify and discuss the facts leading to plaintiff's questioning of its impartiality. (See USSC No. 94-1956). As plaintiff kept asserting the law, the courts continued to resist the law, with "Denied"... "Denied"... "**DENIED!**" It has now become

"Sanction him"... "Sanction him!"..."**SANCTION HIM!**" What's the next step? "Crucify him"... "Crucify him!"... "**CRUCIFY HIM!!**" ???

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously.... If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States* (1928) 277 U.S. 438, 485 (Brandeis, J. diss.).

Law is the means by which truth is ascertained in an orderly society. (See *Chambers v. Baltimore & Ohio R.* (1907) 207 U.S. 142, 148). However, ***Truth*** is eternal--whether by law or by anarchy. Branson will **always** persist for Truth, regardless of scoffing and ridicule from ***the enemy*** in published or unpublished opinions, or otherwise, for so doing.

If this war can take place against Branson, what about when "John Q. Public" insists on truth and the law being followed by the courts? Is anyone safe?

Truth and justice are synonymous. This Court has long held that "justice must satisfy the ***appearance of justice.***" *Offutt v. United States* (1954) 348 U.S. 11, 14. [emph. added]. To at least have the **appearance** of justice, this Court must take whatever action is necessary to provide the judicial remedy to which plaintiff is entitled, not only for this case, but for plaintiff's other cases left in limbo, without remedy.

Dated: September 22, 1995

Ronald Branson

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APPENDIX

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ORDER IN RESPECT OF WHICH THE WRIT IS SOUGHT*
(USSC Rule 20.3(a))

FILED
AUG 30 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON,
Plaintiff-Appellant,

vs.

MICHAEL G. NOTT; MORIO L. FUKUTO; RAY L. HART; JERRY K. FIELDS; ESTELLA GUEVARA; ZAHAVA STROUD; and MORRIS, POLICH & PURDY, P.C., a licensed firm,
Defendants-Appellees.

No. 94-55332
DC# CV 93-05967-ER

ORDER

Before: CHOY, SKOPIL and FERGUSON, Circuit Judges

The petition for rehearing is DENIED.

PETITIONER'S FOOTNOTE:

* This order was made ***after*** the C/A was notified of USSC No. 94-1956, currently pending before the U.S. Supreme Court involving the questioning of its impartiality under Title 28 U.S.C. §455(a).
(See Preliminary Statement to the Petition for Rehearing, APP A-18).

PUBLISHED OPINION

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON,
Plaintiff-Appellant,
v.
MICHAEL G. NOTT; MORIO L. FUKUTO; RAY L. HART; JERRY K. FIELDS; ESTELLA GUEVARA; ZAHAVA STROUD; and MORRIS, POLICH & PURDY, P.C., a licensed law firm,
Defendants-Appellees.

No. 94-55332

D.C. No.
CV 93-05967-ER

OPINION

Appeal from the United States District Court
for the Central District of California
Edward Rafeedie, District Judge, Presiding

Submitted November 14, 1994*
Filed August 1, 1995

Before: Herbert Y.C. Choy, Otto R. Skopil, Jr., and Warren J. Ferguson, Circuit Judges.

Opinion by Judge Choy

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* The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed.R.App.P. 34(a), Ninth Circuit Rule 34-4.

PETITIONER'S FOOTNOTE: Typographical errors as well as incorrectly stated facts in this Opinion are indicated by *[sic]*.

SUMMARY

Civil Litigation and Procedure/Jurisdiction/Individual Rights

The court of appeals affirmed a district court judgment in part, vacated the judgment in part and remanded in part. The court held that the district court lacked subject matter jurisdiction over a purported civil rights claim, where the claim constituted an impermissible collateral attack on prior state court decisions.

Appellant Ronald Branson filed suit in California state court seeking damages from the County of Los Angeles and several law enforcement officers for allegedly falsely arresting and imprisoning him. After being served with the complaint nearly three years after its filing, the County and two of the defendant officers jointly filed a demurrer to Branson's complaint and a motion to dismiss the action for lack of prosecution. One defendant, Sergeant Smith, failed to respond to the complaint. Branson requested that a default judgment *[sic]* be entered against Smith. However, a County Superior Court deputy clerk did not enter the default. Smith filed a motion to quash the service of process, stating that he was never served with the complaint. A California superior court judge found that Smith had not been properly served, granted Smith's motion to quash the purported service of process and dismissed Smith from the case. The judge later sustained in part and overruled in part the remaining defendants' demurrer and provided Branson with the opportunity to amend his complaint. Branson filed a motion to vacate the demurrer ruling and moved to dismiss his case. The judge granted the defendants' motion to dismiss Branson's action for failure to prosecute. The California Court of Appeal affirmed the judgment against Branson, the California Supreme Court denied his petition for review, and the United States Supreme Court denied certiorari.

Branson filed an action in the federal district court under 42 U.S.C. §1983, alleging that, in adjudicating his state claim, appellees, certain attorneys, the superior court clerk, the state trial judge and the appellate justices, individually and through a conspiracy, *[sic]* deprived him of his right to procedural due process secured by the Fourteenth Amendment. The defendant California appellate jus-

tices moved to dismiss the complaint on the grounds that the district court lacked subject matter jurisdiction and the complaint failed to state a claim upon which relief could be granted. The remaining defendants filed a separate memorandum in support of the motion to dismiss, arguing, among other things, that Branson' *[sic]* complaint was barred by the applicable statute of limitations. The latter defendants also requested that the court impose Fed. R. Civ. P. 11 sanctions against Branson. The district court granted the defendants' motions to dismiss Branson's §1983 action on the ground that it was barred by the applicable one-year statute of limitation. Pursuant to the civil rights attorneys' fee provision, the court ordered Branson to pay to the defendants an amount of attorneys' fees and costs they incurred in defending against Branson's action. Branson appealed.

[1] Dismissal of Branson's complaint was required because the district court lacked subject matter jurisdiction over his purported §1983 claim. *[sic]* [2] As courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings. This is true even when the challenge to a state court decision involves federal constitutional issues. [3] Branson's §1983 claim amounted to nothing more than an impermissible collateral attack on prior state court decisions.*[sic]* Branson sought an order requiring the state superior court clerk to enter a default judgment *[sic]* against Smith, as well as reversal of the appellate court's decision. [4] Branson was impermissibly seeking to review the merits of state court decisions in a "particular case." *[sic]*

[5] Because the district court lacked subject matter jurisdiction over Branson's purported civil rights claim in the first

instance, *[sic]* it also lacked the power to award attorneys' fees under the civil rights attorney fee statute. [6] Moreover, where dismissal is mandated by a lack of subject matter jurisdiction, a defendant is not a "prevailing" party within the meaning of the attorneys fee statute.

[7] Remand was ordered for a determination as to whether Branson should be sanctioned pursuant to Rule 11.

COUNSEL

Ronald Branson, Pro per, Granada Hills, California, for the plaintiff-appellant.

Douglas J. Collodel, Morris, Polich & Purdy, Los Angeles, California; Christopher C. Foley, Deputy Attorney General, Los Angeles, California, for the defendants-appellees.

OPINION

CHOY, Circuit Judge:

Ronald Branson appeals *pro se* the district court's dismissal of his *pro se* 42 U.S.C. §1983 civil rights action and award of attorney's fees to defendants pursuant to 42 U.S.C. §1988. We affirm the district court's dismissal of Branson's claim, but vacate the grant of attorney's fees.

I.

Branson's §1983 claim arises out of a purported tort suit that he filed *in propria persona* in California state court over eight years ago. Branson alleges that in adjudicating his state claim, the defendant attorneys, superior court clerk, state trial judge and appellate justices, individually and through a con-

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spiracy, *[sic]* deprived him of his right to procedural due process secured by the Fourteenth Amendment. In essence, Branson alleged that the defendants impeded his access *[sic]* to certain perceived statutory rights, including a "right to entry of default" and the right to voluntarily dismiss his suit. *[sic]*

In his underlying state action, filed on April 7, 1987, Branson sought damages from the County of Los Angeles and several law enforcement officers for allegedly falsely arresting and imprisoning him.[1] *Branson v. County of Los Angeles*, No.

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[1] This is one of numerous unsuccessful actions Branson has brought seeking redress for alleged violations of his rights stemming from his 1986 arrest for attempted burglary of a motor vehicle.

One month after filing the above described state tort action, Branson also commenced a lawsuit in federal court pursuant to 42 U.S.C. §1983 alleging false arrest, illegal search, excessive force, false imprisonment, and violation of substantive due process arising out of his 1986 arrest. *Branson v. City of Los Angeles*, No. 87-03003-WDK (C.D.Cal. filed May 8, 1987). Branson's complaint

named as defendants the City and County of Los Angeles, several law enforcement officers, and the Commissioner of the Los Angeles Municipal Court ("Commissioner Schwartz"). As this court observed, Branson "su[ed] nearly every person he came into contact with during the state proceeding." *Branson v. City of Los Angeles*, No. 91-55819, 1992 WL 188107, at * 1 (Aug. 6, 1992) (unpublished disposition), *cert. denied*, 113 S.Ct. 1646 (1993). After portions of the case were dismissed, a jury found for the defendants. Branson unsuccessfully appealed to this court several times from the district court's rulings in that case. *Branson v. City of Los Angeles*, 912 F.2d 334 (9th Cir.1990) (dismissing premature appeal for lack of appellate jurisdiction); *Branson v. City of Los Angeles*, No. 91-55819, 1992 WL 188107 (Aug. 6, 1992) (unpublished disposition) (rejecting Branson's challenge to the jurisdiction of both the state and federal courts and affirming several pretrial rulings), *cert. denied*, 113 S.Ct. 1646 (1993).

On July 2, 1987, Branson filed another action in the Los Angeles Superior Court, alleging that Commissioner Schwartz violated his civil rights by failing to arraign *[sic]* him in a speedy manner. *[sic] Branson v. City of Los Angeles*, No. NWC 30307 (Cal.Super.Ct. filed July 2, 1987). The court dismissed Branson's claim against Schwartz on the basis of judicial immunity.

C643013 (Cal.Super.Ct. filed Apr. 7, 1987). On May 1, 1990, after finally being served with the complaint nearly three years after its filing, the County of Los Angeles and two of the defendant law enforcement officers jointly filed a demurrer to Branson's complaint and a motion to dismiss the action for lack of prosecution. One of the defendants, Sergeant Smith, failed to respond to the complaint. On May 14, 1990, Branson requested that a default judgment *[sic]* be entered against Sergeant Smith. However, a Los Angeles County Superior Court deputy clerk, Estella Guevara, did not enter the default. On May 25, 1990, Sergeant Smith filed a motion to quash the service of process, stating in his motion that he was never served with the complaint. California Superior Court Judge Jerry K. Fields, a defendant in the case at bar, found that Sergeant Smith had not been properly served, granted Smith's motion to quash the purported service of process, and dismissed Smith from the case.

On June 11, 1990, Judge Fields sustained in part and overruled in part the remaining defendants' demurrer and provided

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Branson has also previously filed suit against the state and federal judges who adjudicated his various claims arising out of the same arrest incident. Branson brought a §1983 action alleging that California Superior Court Judge Allen *[sic]* Haber violated his constitutional rights by setting aside a default

judgment *[sic]* against the City of Los Angeles in the then ongoing *[sic]* state court tort action. *Branson v. Haber*, No. CV-92-03544-LGB (C.D.Cal. filed June 12, 1992). This court upheld the dismissal of the action against Judge Haber, finding that "the relief Branson requests would require a federal court to intrude too far into a state court's judicial proceeding...." *Branson v. Haber*, No. 93-56696, 1994 WL 184682, at * 1 (May 13, 1994) (unpublished disposition), *cert. denied*, 115 S.Ct. 579 (1994).

Branson also brought a Bivens action against a district court judge and three judges of this court. *Branson v. Fletcher*, No. CV- 94-01932-R (C.D.Cal. filed Mar. 28, 1994). This court affirmed the dismissal of Branson's Bivens action on the ground that his claims were barred by the doctrine of judicial immunity. *Branson v. Fletcher*, No. 94-55951, 1995 WL 80191 (Feb. 27, 1995) (unpublished disposition), *petition for cert. filed*, 63 U.S.L.W. 3874 (U.S. May 30, 1995) (No. 94-1956).

(text continued on next page)

PETITIONER'S FOOTNOTE:

Regarding *Branson v. Haber*, see DECLARATION RE IN-LIMBO STATUS, (infra), APP A-45.

Regarding *Branson v. Fletcher*, see USSC No. 94-1956 currently pending. (Companion case to the instant petition).

Branson with the opportunity to amend his complaint. Rather than avail himself of this opportunity, Branson filed a motion to vacate the demurrer ruling and moved to dismiss his case. On August 22, 1990, Judge Fields granted the defendants' motion to dismiss Branson's action for failure to prosecute. *[sic]*

Branson appealed to the California Court of Appeal, claiming that the trial court improperly quashed service of process on Sergeant Smith and that he was entitled to have a default judgment *[sic]* entered against Sergeant Smith. Branson also appealed the trial court's ruling on defendants' demurrer, its dismissal of Branson's claim for failure to prosecute, and claimed that Judge Fields should be "disqualified." In an unpublished opinion authored by Justice Michael G. Nott, the California Court of Appeal affirmed the judgment against Branson. *Branson v. County of Los Angeles*, Nos. B052261, B053009 (Cal.Ct. App. Feb. 19, 1992). The California Supreme Court denied his petition for review and the United States Supreme Court denied certiorari. *Branson v. County of Los Angeles*, No. S025746 (Cal.S.Ct. Apr. 29, 1992) (in bank), *cert. denied*, 113 S.Ct. 210 (1992).

Branson then filed this action in federal district court for the Central District of California under 42 U.S.C. §1983. In this purported §1983 action, Branson alleges that his right to procedural due process was violated by (1) the superior court clerk's failure to enter a default judgment *[sic]* against Sergeant Smith; (2) the California appellate justices' alleged failure to review the default issue, the ruling on demurrer, and the denial *[sic]* of his motion for a voluntary dismissal;[2] (3) the judge and attorney defendants' conspiracy to have his case dismissed for lack of prosecution; and (4) as part of the conspir-

[2] In particular, Branson alleged that California Court of Appeal Justice Nott, the author of the appellate opinion, deprived Branson of due process and that Justices Morio I. Fukuto and Ray L. Hart "participated" in Justice Nott's unconstitutional conduct by concurring in the opinion. *See* Complaint ¶¶53-54.

acy, the appellate justices' failure to review Branson's argument for a voluntary dismissal *[sic]* and request for review of the demurrer

ruling.

The defendant California appellate justices moved to dismiss Branson's complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds that the district court lacks subject matter jurisdiction over Branson's claims and that the complaint fails to state a claim upon which relief can be granted. The remaining defendants filed a separate memorandum in support of the motion to dismiss, arguing, among other things,[3] that Branson's complaint is barred by the applicable statute of limitation. The latter defendants also requested that the court impose both monetary and injunctive Rule 11 sanctions against Branson. In particular, the defendants requested that the court fine Branson in the amount of the attorney's fees they incurred in defending against this lawsuit, and require Branson to submit with any future pleadings or complaints an affidavit, swearing under oath the truth of the facts supporting the claims made in the pleading. In response, Branson maintained that his complaint should not be dismissed, that it was not frivolous, and sought sanctions against defendants' counsel, whose competence and integrity he repeatedly attacked.[4]

In a terse Order dated February 28, 1994, the district court granted the defendants' motions to dismiss Branson's §1983

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[3]The defendants also argued (1) Branson's complaint is barred by the doctrine of res judicata; (2) Judge Fields and the court clerk are immune from civil liability; (3) the complaint is an unlawful attempt to remove a state action; (4) the attorney defendants cannot be held liable under §1983 because they are not state actors; (5) the complaint lacks factual support; and (6) the complaint is impermissibly vague and ambiguous.

[4]Branson, for example, asserts that defendants' motion to dismiss is "made up of false, imaginary and conclusory innuendos" and that "[o]n an *objective basis*, Ms. Stroud's motion is a masterpiece of incompetence." Plaintiff's Opposition to Motion to Dismiss Complaint at 33 (emphasis in original).

action on the ground that it was barred by the applicable one-year statute of limitation.[5] *Branson v. Nott*, No. CV 93-5967-ER (GHKx) (C.D.Cal. Feb. 28, 1994). Pursuant to the civil rights attorney's fee provision, 42 U.S.C. §1988, the district court further ordered Branson to pay to the defendants the $3465.00 in attorney's fees and costs they incurred in defending against Branson's action

which it found to be "frivolous and an abuse of the judicial process." *Id.* at 1. The district court did not mention the propriety of Rule 11 sanctions at the hearing on the motion or in its dismissal Order.

Branson timely appealed the district court's Order.

II.

[1] We may affirm the decision of the district court on any basis which the record supports. *United States v. Washington*, 969 F.2d 752, 755 (9th Cir.1992), *cert. denied*, 113 S.Ct. 1945 (1993). We find that dismissal of Branson's complaint was required because the district court lacked subject matter jurisdiction over his purported §1983 claim. *[sic]*

[2] Whether subject matter jurisdiction exists is a question of law. *Nike, Inc. v. Comercial Iberica De Exlusivas Deportivas, S.A.*, 20 F.3d 987, 990 (9th Cir.1994). As courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986). This is true even when the challenge to a state court decision involves federal constitutional issues. *Feldman*, 460 U.S. at 484-86; *Worldwide Church of God*, 805 F.2d at 891.

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[5]The court observed at oral argument on defendants' motion to dismiss that there were a number of alternate grounds supporting dismissal of Branson's case, including the fact that the defendant judges would be immune from civil liability.

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[3] Notwithstanding his protestations to the contrary, Branson's §1983 claim amounts to nothing more than an impermissible collateral attack on prior state court decisions. *[sic] See MacKay v. Pfeil*, 827 F.2d 540, 543 (9th Cir.1987) (per curiam). Branson seeks as "prospective injunctive relief" an order requiring the state superior court clerk to enter a default judgment *[sic]* against Sergeant Smith and, inconsistently, *[sic]* to "immediately set the default for hearing for court judgment as requested by plaintiff...." Complaint ¶1 at 31. Such an order *[sic]* would implicitly reverse the state trial court's finding that Smith was not served in compliance with California law. Moreover, Branson's complaint explicitly seeks reversal of the appellate court's decision. He requests an order

requiring California Court of Appeal Justice Michael G. Nott to:

> (a) *set aside and vacate* as unconstitutional and void the appellate decision filed February 19, 1992; (b) *prepare and file an amended decision* reflecting the required appellate review of the ruling on demurrer made on June 11, 1990 ... reviewing all questions of law *de novo*; (c) *remove the dismissal* for "lack of prosecution" as moot by operation of law; (d) *dismiss the appeal* against Dwight Smith as moot and *remand the matter* to the trial court for default proceedings.

Complaint ¶2 at 32 (emphasis added). A federal district court is without jurisdiction to grant the relief Branson seeks. *[sic]. See KacKay*, 827 F.2d at 543.

[4] Nor is Branson's action saved by the fact that federal district courts may review a "general" constitutional challenge that "does not require review of a final state court decision in a particular case." *Worldwide Church of God*, 805 F.2d at 891 (citing *Feldman*, 460 U.S. at 482-86 & n.16). Here, it is evident from the face of his complaint that rather than mounting a general constitutional challenge, Branson is impermissibly seeking to review the merits of state court decisions in a "particular case." *[sic]* For instance, Branson characterizes his action as follows:

> [P]laintiff is hereby challenging the adequacy, appropriateness, and fairness of the state post-deprivation process itself *as it was carried out in the underlying state tort action* and the appellate process thereof, which plaintiff alleges prevented redress of the deprivation.

Complaint ¶8 (emphasis added).[6]

Thus, dismissal was proper because the district court lacked jurisdiction over Branson's purported §1983 action. *[sic]*

III.

A.

Finding Branson's complaint to be frivolous and abusive of the judicial process, pursuant to the civil rights attorney fee provision, 42 U.S.C. §1988(b), the district court *sua sponte* awarded to defendants the attorney's fees they incurred in defending against Branson's claims.[7] Under §1988, a district court may award attorney's fees to a "prevailing" civil rights

[6]In his briefs, Branson both contradicts *[sic]* himself and reveals that he is not making a general challenge. In his opening brief, Branson maintains: "This is a suit alleging that the state procedures themselves are fundamentally flawed, and is **NOT** a suit seeking review of any state court decision." Appellant's Opening Brief at 4 (emphasis in original). But then, in response to the appellees' argument that Branson is not making a general constitutional challenge that would provide federal jurisdiction, Branson asserts: "plaintiff is ***not*** making a 'general attack on California appellate procedure' but specific articulable violations of procedural due process by the ***particular defendants*** named –not a general attack." Appellant's Reply Brief at 4 (emphasis in original).

[7]As previously stated, the defendants moved for Rule 11 sanctions. There is no motion for §1988 attorney's fees in the record.

defendant if the district court determines that the plaintiff's claims are " 'unreasonable, frivolous, meritless, or vexatious,' " *Patton v. County of Kings*, 857 F.2d 1379, 1381 (9th Cir. 1988) (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978).[8]

[5] Branson contends that the district court erred in sanctioning him because his complaint was not frivolous. We agree that it was error to impose sanctions under 42 U.S.C. §1988, but for a different reason; because the district court lacked subject matter jurisdiction over Branson's purported civil rights claim in the first instance, *[sic]* it also lacked the power to award attorney's fees under the civil rights attorney fee statute.[9] By itself, §1988 does not provide the district court with jurisdiction to grant an attorney fee award where subject matter jurisdiction to hear the underlying §1983 claim is lacking: "section 1988 does not by its terms confer subject matter jurisdiction upon federal courts, but rather relies upon the provisions of other federal statutes, such as section 1983 read in conjunction with 28 U.S.C. §1343 (1988), ... to confer subject matter jurisdiction." *Keene Corp. v. Cass*, 908 F.2d 293, 298 (8th Cir. 1990); *see also, W.G. ex rel. D.G. v. Senatore*, 18 F.3d 60, 64 (2d Cir. 1994) (concluding that "fee shifting provisions cannot themselves confer subject matter jurisdiction."); *Pierre v. Jordan*, 333 F.2d 951, 958 (9th Cir.1964) (observing that §1988 does not establish subject matter jurisdiction), *cert. denied*, 379 U.S. 974 (1965). And "[w]here there is no subject matter jurisdiction to proceed with the substantive claim, as a matter of law '[t]hat lack of jurisdiction

bar[s] an award of attorneys fees under section 1988.' "

[8]42 U.S.C. §1988(b) provides: "In any action or proceeding to enforce a provision of section ... 1983 ... of this title ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

[9]Although Branson does not argue before us that the district court lacked subject matter jurisdiction to award attorney's fees pursuant to 42 U.S.C. §1988, this court must raise jurisdictional issues *sua sponte*. *See MacKay*, 827 F.2d at 543; *Worldwide Church of God*, 805 F.2d at 890.

Senatore, 18 F.3d at 64 (quoting *Keene Corp.*, 908 F.2d at 298); *see also Smith v. Brady*, 972 F.2d 1095, 1097 (9th Cir. 1992) (in tax context, holding that where a district court lacks jurisdiction over the underlying suit, it also lacks authority to award attorney's fees); *but see Elks Nat'l Found. v. Weber*, 942 F.2d 1480, 1485 (9th Cir. 1991) (affirming dismissal of §1983 action for lack of subject matter jurisdiction while also affirming district court's award of attorney's fees, where fees had been awarded under 42 U.S.C. §1988, and, alternatively, under Fed.R.Civ.P. 11), *cert. denied*, 112 S.Ct. 2995 (1992).[10]

[6] Moreover, even if the district court had the jurisdiction to impose §1988 attorney's fees, attorney's fees are only available under that provision to a party who has "prevailed" on the merits. Where, as here, dismissal is mandated by a lack of subject matter jurisdiction, a defendant is not a "prevailing" party within the meaning of §1988. *See Keene*, 908 F.2d at 298 ("Where a complaint has been dismissed for lack of subject matter jurisdiction, the 'defendant has not 'prevailed' over the plaintiff on any issue central to the merits of the litigation.' ") (citation omitted); *Hidahl v. Gilpin County Dep't of Social Servs.*, 699 F.Supp. 846, 849 (D.Colo. 1988) (denying attorney's fees pursuant to §1988 where civil rights action dismissed for lack of jurisdiction).

Accordingly, we vacate the district court's grant of attorney's fees pursuant to §1988.

B.

Before the district court, defendants sought sanctions pursuant to Rule 11, rather than attorney's fees under 42 U.S.C.

[10]We recognize that there are some circumstances in which attorney's fees or costs may be imposed even where the court proves to be without subject matter jurisdiction. 28 U.S.C. §1919 authorizes "payment of just costs" in any action or suit dismissed for lack of jurisdiction. 28 U.S.C. §1447(c) authorizes attorney's fees and costs for wrongful removal.

§1988. The district court did not address defendants' Rule 11 motion. That the district court lacked subject matter jurisdiction over Branson's complaint *[sic]* does not preclude it from imposing Rule 11 sanctions for filing a frivolous complaint. *See Willy v. Coastal Corp.*, 112 S.Ct. 1076, 1080-81 (1992) (holding that a district court could constitutionally impose Rule 11 sanctions in a case in which was later determined that the court lacked subject matter jurisdiction); *Westlake N. Property Owners Ass'n. v. City of Thousand Oaks*, 915 F.2d 1301, 1303 (9th Cir. 1990) (finding "even if a court does not have jurisdiction over an underlying action, it may have jurisdiction to determine whether the parties have abused the judicial system and whether sanctions are appropriate to remedy such abuse.")

[7] Although there appears to be ample support for the district court's conclusion that Branson's complaint was frivolous, *[sic]* the propriety of imposing Rule 11 sanctions against Branson has not been raised on appeal to this court. We thus remand for the district court to determine whether Branson should be sanctioned pursuant to Rule 11, and, if so, what type of sanctions should be imposed. The district court's judgment is therefore,

AFFIRMED IN PART, VACATED IN PART, AND REMANDED IN PART.

ORDER AWARDING COSTS TO APPELLEES

FILED
SEP 11 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON
Plaintiff-Appellant,
v.
MICHAEL G. NOTT, et al.,
Defendant-Appellees.

No. 94-55332
D.C. # CR-930567-ER(SH)*[sic]*
Central California

ORDER

Before: CHOY, Circuit Judge

The panel has decided to award costs to Appellees.

PETITION FOR REHEARING
WITH PRELIMINARY STATEMENT

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55332

RONALD BRANSON

Plaintiff and Appellant

vs.

MICHAEL G. NOTT, personal capacity; MORIO L. FUKUTO, personal capacity; RAY L. HART, personal capacity; JERRY K. FIELDS, personal capacity; ESTELLA GUEVARA, personal capacity; ZAHAVA STROUD, Attorney at Law; MORRIS, POLICH & PURDY, a licensed lawfirm,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable EDWARD RAFEEDIE, District Judge
No. CV 93-5967-ER

PETITION FOR REHEARING

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

PRELIMINARY STATEMENT TO PETITION FOR REHEARING

For the record, before presenting the petition for rehearing *per se*, particular attention must be brought to the Petition For Writ of Certiorari currently pending before the U.S. Supreme Court, No. 94-1956, acknowledged by Judge Choy in a footnote at the bottom of page 9358 of his "Opinion" herein. That petition states on page 6: "This petition addresses the collateral issue of the qualification of the Ninth Circuit Court of Appeals to decide this appeal [i.e., USCA No. 94-55951, filed four months *after* the instant appeal] based on several improprieties apparent on the face of the record and the failure and refusal of the C/A [Court of Appeals] to identify and address those issues of impropriety which were brought by plaintiff/ appellant's motion for recusal under 28 U.S.C. §455(a)."

In the first paragraph under "Argument" in that petition at pages 13-14 it states: "'Power corrupts, and absolute power corrupts absolutely.' As the previous factual synopsis shows, and as the record itself reflects, the judicial system is way out of control-- it doesn't work! It has become a public disgrace! Plaintiff (petitioner herein) has been seeking a judicial remedy for his petition of grievances for eight solid years, and to date, not one of his federal questions has been addressed by the courts. Facts presented are either ignored altogether or are twisted beyond recognition and conclusions are based on those false representations. Words and intents are placed in plaintiff's mouth by the opposition, and the courts readily adopt it as truth. The courts routinely misinterpret plaintiff's documents and then treat them according to their misinterpretation. Procedures that could not be taken under law, according to the facts of the case, are arbitrarily declared by the courts as having been taken-- and then fraudulently denied under that pretense. Plaintiff's real opponents are the federal judiciary who are unaccountable, arbitrary, arrogant, dishonest, and treasonous. Even criminal conduct by the judiciary is ignored, as this record also shows...."

Three copies each of that petition were mailed to six colleagues of the author of this decision, Judge Choy, and the other two judges on his panel, Judges Otto R. Skopil, Jr., and Warren J. Ferguson on May 25, 1995.

That petition informed Judge Choy [reference to Judge Choy herein automatically includes Judges Skopil and Ferguson] that

plaintiff filed an Affidavit Re Criminal Conduct involving two district court judges (p.8) as well as a Complaint of Judicial Misconduct with the Judicial Council of the Ninth Circuit (p.9) naming the same two district court judges and the six circuit judges, colleagues of Judge Choy, whom were served copies of the USSC petition. Judge Choy is doubtless informed that the Chief Judge dismissed the complaint of misconduct ***without addressing in the least the misconduct complained about*** which negligence is itself misconduct and, as a result, plaintiff filed a complaint of misconduct naming the Chief Judge involved in a cover up, which complaint is now pending.

This is the same "Ninth Circuit Court of Appeals," writing this ***published*** opinion, as is under attack by plaintiff to the U.S. Supreme Court as well as to the Judicial Conference of the United States whom plaintiff has placed on notice of these impending matters involving the Ninth Circuit, and to Congress itself. Is there any reason to expect honesty and integrity on the part of the "Ninth Circuit" this time? Obviously not, however the instant case existed ***prior to*** the time of plaintiff's questioning this court's integrity on the record. Because this court delayed its decision in this case for almost a year, until well after plaintiff first officially placed that integrity into question by filing his motion for recusal of the Ninth Circuit Court on 11/16/94 in USCA No. 94-55951, that taint has fully engulfed this case and the Ninth Circuit's "Opinion" herein. Plaintiff, in this instant case, has become vulnerable to a sinister plot which the Ninth Circuit was bound to take in retaliation to case No. 94-55951, and that's exactly what has developed here. Ever since plaintiff placed this court's impartiality formally into question, it was legally required to recuse itself in that case (94-55951). Ethically and morally it should remove itself from ***any further handling of plaintiff's cases– including this one.*** But, of course, it won't because it is <u>in fact</u> partial as is evidenced by its conduct. The Ninth Circuit Court, as a leopard, is as incapable of changing its spots for this particular case as it could for any other case involving plaintiff in the future. When the Ninth Circuit affirmatively

refused to recuse itself on 12/9/94 in Case No. 94-55951, it effectually "declared war" upon plaintiff. In publishing the instant deci-

sion, it determined to make its declaration of war against plaintiff open for all the world to see. Plaintiff cannot any longer (since 12/9/94) expect fair and impartial treatment by the Ninth Circuit in any case.

The timing of the Choy opinion is significant. The instant appeal ("NOTT appeal") proceeded in a normal time schedule through the usual procedure of inviting the parties to present a statement setting forth reasons why oral argument should be heard, which was done 9/9/94. Plaintiff/appellant then timely mailed his "Statement For Oral Argument" on 9/17/94. The case was apparently submitted without oral argument on 11/14/94. Just two days later, 11/16/94 plaintiff filed his motion for recusal of the Ninth Circuit in the other case. Thereafter, there ensued an inordinate delay in this case for almost a year. With blood on its hands, and question of its qualification still on the table, the Ninth Circuit went ahead anyway and assumed the role as "decisionmaker" in this case. Notwithstanding that fact, if a decision was nevertheless to be forthcoming, it should have materialized by the end of 1994-- the case, in truth, isn't that complicated (although the Ninth Circuit has just made it so by fraud and manipulation).

After plaintiff filed No. 94-55951 ("FLETCHER appeal") with the Ninth Circuit on 10/12/94, which names three of their own circuit judges and a district judge as defendants, Judge Choy and his colleagues decided to wait that one out before making its strategic move, using the NOTT appeal as its "trump card" in retaliation for plaintiff's exposure of their "brethren" showing the lack of integrity, credibility, and impartiality arising from several improprieties appearing on the record in FLETCHER. As plaintiff stated "Plaintiff's real opponents are the federal judiciary..." of which the Ninth Circuit sits at the head of the table-- they have the power not only to destroy plaintiff's federal case of which USSC No. 94-1956 is the culmination after eight years, but also the power to destroy plaintiff's state actions, of which the instant NOTT appeal is just one case-- another one equally destroyed is the HABER appeal (USCA No. 93-56696) mentioned in the footnoting of the Choy "Opinion." SCHWARTZ is an underlying part of the same

state action as the HABER appeal which is blocked from appeal in

state court because HABER refuses to render the judgment that is due from which a state appeal could be taken, and the federal courts did nothing to clear that blockade which still exists to this day!. If plaintiff had the funds available, he would offer to anyone $5,000 to produce the ***default judgment*** which Judge Choy says was "set aside" in his footnote. The record shows that HABER **removed plaintiff's evidence from submitted status** and refused to render the default judgment [which was due]* by clear and unequivocal state law-- all federal courts have refused to talk about plaintiff's legitimate claim of entitlement to that judgment under CCP §585(b). If that's not *cover-up*, what is it? There has not been a judicial remedy in **any** of the cases filed by plaintiff-- state and federal! All cases mentioned in the footnotes remain in limbo to this day-- ***no remedy!***

After sitting silently on this case for almost a year, Judge Choy and company decided to now make their tactical move against plaintiff in retaliation for his calling to account the conduct of the judges in the FLETCHER appeal (USCA No. 94-55951; USSC No. 94-1956). This latest action on the part of the Ninth Circuit is an outgrowth of the FLETCHER developments which has tainted this case with the same poison and corruption. As their "trump card" the Ninth Circuit is now **publishing** its false opinion purely as a smear campaign against plaintiff. The decision sets no legal precedent, develops no new case law or distinguishing factors that could be cited as authority, nor does it have any Shepardizing value. Its only purpose appears to be harassment-- to tell the world through the guise of a written legal opinion that plaintiff is a raging lunatic, some kind of nut suing everyone in sight; that he is a repeated "loser" and not willing to accept his "losses" etc., etc. Not only is the Court of Appeals ("C/A") committing ***libel*** against plaintiff by this published opinion, but they are also fostering and encouraging ***extortion*** under the guise of Rule 11 sanctions based on ***fraud and deceit***. Judge Choy and the entire "system" standing to benefit from this fraud (including legal counsel) can stand back and say "What are you going to do about it?" Redress in the courts is no longer a reality. Plaintiff has no judicial forum to bring a complaint of **Libel, Extortion** or **Attempted**

*phrase omitted from original

Extortion, Fraud and Deceit, just to name a few, against Judge Choy and company or the Ninth Circuit in general. That doesn't mean the charges don't exist-- it's just that the entity that's established to provide the forum for redress *is the enemy!*

As plaintiff has already shown, based on USSC No. 94-1956 and its supporting record, the courts are out of control and plaintiff is left with chaos. As against the sheer tyranny, it might be said that plaintiff has "lost" over and over again. However, the fact is that courts have been running from the truth and from the law, and on that foundation plaintiff has not been defeated. It's not what "BRANSON" says-- it's what the record says --not bits and pieces taken out of context, but all of it in its proper context. But the courts don't want to talk about that.

The Ninth Circuit has prostituted its integrity and public trust to pursue its own political ends. Even Collodel, counsel for the defendants in this case, told me "The courts usually give us whatever we want" and indeed his words have proven true. Although it may please him, is it really a plus for society? It is paramount upon the Ninth Circuit Court that it rise above the public perception of the slightest hint of impropriety. But if half of what petitioner has argued in his case is true, America's freedom is in peril-- for anyone can be falsely arrested on any charge, kept imprisoned indefinitely, denied an appearance before a magistrate and deprived permanently of any determination of probable cause for whatever charges this arbitrary government wishes to lay upon them, all without redress in the courts. Is there any doubt why plaintiff has arrived at the opinion that the Ninth Circuit, an otherwise legitimate institution, has been taken over by criminals.

"Neither the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt..." *--Samuel Adams.*

* * *

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PETITION FOR REHEARING

TO: CLERK OF COURT (Ninth Circuit Court of Appeals)

Introduction: (Petitioner is referred to as "plaintiff" herein to conform to the record).

In plaintiff's judgment, material points of fact and law have been overlooked in the decision, as follows:

1. The court has overlooked Title 42 U.S.C. §1983 as pertaining to procedural due process claims. (Zinermon v. Burch (1990) 494 U.S. 113).

The complaint alleges "Plaintiff hereby seeks federal injunctive relief and damages under Title 42 U.S.C. §1983, for the deprivation by state action under color of state law of a constitutionally protected interest in life, liberty and property ***without due process of law*** within the meaning of *Parratt v. Taylor* (1981) 451 U.S. 527, the third type of protection under the Due Process Clause of the Fourteenth Amendment as described in *Daniels v. Williams* (1986) 474 U.S. 327, 338-9 and *Zinermon v. Burch* (1990) 110 S.Ct. 975, 983." [Complaint 5:3-11]. Nowhere does the Choy opinion even mention *Parratt, Daniels,* or *Zinermon.* Instead it bases its entire decision on the *Feldman* doctrine (*District of Columbia Court of Appeals v. Feldman* (1983) 460 U.S. 462) without first reviewing the law set forth in the three cases cited by plaintiff which, for brevity, will be referred to herein as the *"Zinermon* doctrine."

Plaintiff has the right to rely on *Zinermon* [now cited as 494 U.S. 113] which states "The Due Process Clause also encompasses a third type of protection, a guarantee of fair procedure. A §1983 action may be brought for a violation of procedural due process,.... In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law." Id.* p.125 [emph. in orig.] *Zinermon,* decided four years after *Feldman,* does not mention any exceptions to bringing a procedural due process claim subject to *Feldman.* A §1983 claim for procedural due process stands on its own, and any litigation and review of this

case must consider the *Zinermon* doctrine in the first instance before reaching *Feldman.* If there is any reconciling to be done between the two cases, then this court must set forth the law presented by both and come up with evidence from the record why *Zinermon* is overcome or superseded by *Feldman.* This court has failed to perform

that obligation.

Zinermon further provides: "In *Monroe*, this Court rejected the view that §1983 applies only to violations of constitutional rights that are authorized by state law, and does not reach abuses of state authority that are forbidden by the State's statutes or Constitution or are torts under the State's common law. It explained that §1983 was intended not only to 'override' discriminatory or otherwise unconstitutional state laws, and to provide a remedy for violations of civil rights 'where state law was inadequate,' but also to provide a federal remedy 'where the state remedy, though adequate in theory, was not available in practice.' 365 U.S., at 173-174." *Zinermon, supra,* 494 U.S. at 124. Time and time again, not only in this appeal, but before the district court, plaintiff has urged that this is the focus of his procedural claim– the state law **is adequate** (the California appellate system is fine; the California default law is fine), ***but the remedy is not available in practice.*** "...[I]n many cases there is 'no quarrel with the state laws on the books,' ...instead, the problem is ***the way those laws are or are not implemented by state officials.***" *Id.* p.125 [emph.added].

The Ninth Circuit is bound and determined to make this a *Feldman* problem, one way or another, come hell or high water, in order to find a way to stop plaintiff and slap him with sanctions under Rule 11 for a "frivolous complaint." The fatal omission by the court, however, is finding how *Feldman* can be a bar to a procedural due process claim authorized under §1983 as established in *Zinermon*. For the court to take a quantum leap over *Zinermon*, by-passing it altogether, to arrive at its desired destination of *Feldman*, smacks of not just the ***appearance of impropriety***, but ***impropriety in fact.***

All of the purported inconsistencies and contradictions claimed by the court that were made by "Branson" are created out of the *Feldman* doctrine. Under *Feldman* there are only two types of claims that are considered: (1) a permissible "general constitutional

challenge" or (2) an impermissible appeal of a state court decision. (See *Worldwide* cited by the court). According to defense counsel and the court, plaintiff's complaint had to fall under one or the other. The problem with that conclusion is that it isn't based on any evi-

dence that *Feldman* applies at all. Plaintiff's claim is neither of the above, and any decision based solely on those choices is void and a nullity unless it can be substantiated by law. *Feldman* alone doesn't supply legal support for deciding this case. Plaintiff's reliance on *Zinermon* is sound, and his rights thereunder cannot legally be displaced by the court's reliance on *Feldman*. So the court's statement that plaintiff's case isn't "saved" by the *Feldman* exception, i.e., a "general constitutional challenge," is merely a strawman invented by this court because it refuses to see the truth.

Defense counsel, backed by the court, tries to put words in plaintiff's mouth saying that he is making "a general attack on California appellate procedure to fall within the exception noted in *Feldman*." [JAB p.10]. The whole idea of "general challenge" in footnote 6 of the "Opinion" is irrelevant and does not apply to plaintiff's procedural due process claim under *Zinermon* authority. *Feldman* does not cover the §1983 remedy "where the state remedy, though adequate in theory [i.e., no general challenge involved], was not available in practice." *Zinermon*, 494 U.S. at 124, citing *Monroe*. So the subject matter is entirely different than that contemplated under the *Feldman* theory.

The word "procedure" under the *Zinermon* theory in a procedural due process claim does not equate with "law" but with "the way those laws are or not implemented by state officials." *Zinermon*, at 125. That distinction is paramount in deciding this case. That distinction is further evidence that plaintiff's case does not come within *Feldman*. If the court had reviewed this case under the *Zinermon* theory authorizing a remedy under §1983 for procedural due process claims, there would be no "contradictions" as stated in footnote 6. There should be no confusion about the fact that "plaintiff is hereby challenging the adequacy, appropriateness, and fairness of the state post-deprivation process itself ***as it was carried out in the underlying state tort action*** ..." i.e., the way state law was or was not implemented by state officials [the particular defendants named]

as provided under *Zinermon*. Confusion enters the picture only because this court insists upon entering *Feldman* into the equation. It "doesn't compute" according to the facts.

What makes this Ninth Circuit Opinion even more sinister is the statement "Notwithstanding his protestations to the contrary, Branson's §1983 claim amounts to nothing more than an impermissible collateral attack on prior state court decisions" and then cites *MacKay v. Pfeil* which is a progeny of *Feldman*. It isn't "Branson's protestations" that are at issue, but the law. What does Branson's §1983 claim amount to under *Zinermon*? The Ninth Circuit insists this is going to be a *Feldman* jurisdictional bar at all costs, even if the credibility of the Ninth Circuit has to come crashing down in shame, in order to throw out the case, and then to impose sanctions under Rule 11 because "Branson brought a frivolous complaint".

Ironically, even under *Feldman*, the court's decision is untenable: "Faced with the task of deciding our power to review constitutional issues which arise from a state court proceeding, we view the *res judicata* requirement of ***full and fair opportunity to litigate***, and the *Feldman* 'inextricably intertwined' barrier as two sides of the same coin. Under the rubric of either 'jurisdiction' or 'res judicata,' the crux of the question is ***whether there has already been actual consideration of and a decision on the issue presented.*** If consideration and decision have been accomplished, action in federal court is an impermissible appeal from the state court decision. If no consideration has been given, or any decision on the matter is ambiguous, it is unlikely that the issues presented to the state high court and to the federal court are so 'inextricably intertwined' that the federal court cannot take jurisdiction. (citations omitted)." *Worldwide Church of God v. McNair* (9th Cir.1986) 805 F.2d 888, 892, quoting *Robinson v. Ariyoshi* (9th Cir.1985) 753 F.2d 1468, 1472. [emph.added].

Evidence shows in this case that "no consideration has been given" to the issues presented in state court. The complaint alleges: "That on February 19, 1992, defendant MICHAEL G. NOTT, acting ***ultra vires*** state authority and under color and pretense of state law, while carrying a badge of authority as a Justice of the California Court of

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Appeal, failed and refused to give appellate review to the issue of the required entry of default of Dwight Smith... to which plaintiff

was statutorily entitled....". [Complt ¶53]. Also, using the same language, the complaint alleges that defendant "failed and refused to give appellate review to the ruling on demurrer... to which plaintiff was statutorily entitled...." [Complt ¶57]. Two issues were presented and no consideration was given to either. That matter was briefed on appeal and repeated in the reply brief.

2. The court has overlooked Title 42 U.S.C. §1983 as pertaining to injunctive relief.

The Choy decision erroneously states that plaintiff is asking for an order that the state court clerk enter a default ***judgment*** and then states "inconsistently" to set the default for hearing for court judgment. The complaint states: "Prospective Injunctive Relief: 1. Order defendant ESTELLA GUEVARA or her successor in office to perform the following ministerial duties as required by California law pursuant to Code of Civil procedure Section 585 subd.(b): (a) enter *nunc pro tunc* as of May 14, 1990, the default [not judgment] of state defendant Dwight Smith as 'DOE I'....; and (b) immediately set the default for hearing for court judgment as requested by plaintiff, notifying plaintiff of the hearing date, time, and location." [Complt 31:17-28]. There's no inconsistencies if the complaint is read correctly. The "state trial court's finding that Smith was not served in compliance with California law" is irrelevant to the issue presented here. The issue is the failure of the defendant-clerk to ***enter the default*** [not judgment] and deprivation of appellate review on that issue. Findings of any court isn't reached.

Furthermore, the Choy "Opinion" states that "A federal district court is without jurisdiction to grant the relief Branson seeks" and again cites *MacKay* which is based on *Feldman*. Not only does *Feldman* principles not apply in plaintiff's case, as aforesaid, but plaintiff has invoked the original federal jurisdiction of district court.

The complaint alleges: "The ***original jurisdiction*** of the federal District Court is invoked under Title 28 U.S.C. §1343(a)(3) in seeking the relief...." [Complt 5:20-22]. There is conferred upon plaintiff a federal statutory right to the benefit of original

jurisdiction in District Court: "The district courts shall have original jurisdiction of any civil action authorized by law [i.e., Title 42

§1983] to be commenced by any person: ... (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States...." *Hagans v. Lavine* (1974) 415 U.S. 528, 535-536.

"The very purpose of §1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights [the Ninth Circuit is certainly not the guardian of plaintiff's federal rights] --to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.' *Ex parte Virginia*, 100 U.S. at 346. In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in §1983 actions, by expressly authorizing a 'suit in equity' as one of the means of redress...." *Mitchum v. Foster* (1972) 407 U.S. 225, 242.

"[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the 14th Amendment forbids the State to do." *Bell v. Hood* (1946) 327 U.S. 678, 684.

"[I]t is ... well settled that where legal rights have been invaded, and a federal statute [i.e., §1983] provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done. (citing *Bell v. Hood*, 327 U.S. at 684)." *Davis v. Passman* (1979) 442 U.S. 228, 245. "[W]here federally protected rights have been invaded... courts will be alert to adjust their remedies so as to grant the necessary relief." (citing *Bell* at p.684). *Duke Power Co. v. Carolina Env. Study Group* (1978) 438 U.S. 59, 71. Likewise here, the federal court may take whatever action necessary "to make good the wrong done", and in fact has an obligation to do so!

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The federal district court does indeed have jurisdiction to grant the relief "Branson" seeks. "[T]he plaintiff is absolute master of what jurisdiction he will appeal to.... [J]urisdiction generally depends upon the case made and relief demanded by the plaintiff."

United States v. Mottaz (1986) 476 U.S. 834, 850 (quoting *Healy v. Sea Gull Specialty Co.* (1915) 237 U.S. 479, 480). Plaintiff brought this suit for injunctive relief under §1983 "for the deprivation by state action under color of state law of a constitutionally protected interest in life, liberty and property ***without due process of law*** within the meaning of *Parratt v. Taylor* (1981) 451 U.S. 527, the third type of protection under the Due Process Clause" [Complt 5:3-9], citing *Daniels v. Williams* (1986) 474 U.S. 327, 338-339 and *Zinermon v. Burch* (1990) 494 U.S. 113, 125. It is that jurisdiction under §1983 and §1343(a)(3) for a procedural due process claim as provided under *Zinermon* to which plaintiff appeals. The federal district court indeed does have all jurisdiction available to remedy the wrong done, whether or not it involves reversing state court decisions.

"Once a constitutional violation is found, a federal court is <u>required</u> to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.' *Milliken v. Bradley* (1974) 418 U.S. 717, 744; *Swann v. Charlotte-Mecklenburg Board of Educ.* (1971) 402 U.S. 1, 16" (citing *Hills v. Gautreaux* (1976) 425 U.S. 284, 293-294). *Dayton Board of Educ. v. Brinkman* (1977) 433 U.S. 406, 419-420 [emph.added]. "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann, supra,* 402 U.S. at 15.

CONCLUSION

The last communication in this case before the decision was filed 8/1/95 was plaintiff's Statement For Oral Argument sent in 9/17/94. Therein he listed twenty disputes that had to be settled before a decision could be made and urged the importance of oral argument because of so many unresolved factual disputes. The first issue on appeal

"Whether the theory of plaintiff's case was established as a matter of law" wasn't touched by the Ninth Circuit. The argument on that issue is headed "The theory of plaintiff's case, as set forth in the complaint, has been disregarded by the district court." [BFA p.12]. So here again, the federal courts are useless, just walking away from vital issues to be decided and creating its own framework in

which to force plaintiff's case-- pounding a square peg into a round hole. The United States Supreme Court has ruled that ***plaintiff is absolute master*** of what jurisdiction he will appeal to. Plaintiff in this case is "Branson" but notwithstanding the jurisdiction he has invoked, according to the Ninth Circuit (certainly **not** an impartial tribunal when it comes to "Branson"), "Branson's §1983 claim amounts to nothing more than an impermissible collateral attack on prior state court decisions." That statement is absolutely false and fraudulent, concealing the true basis of this case, avoiding any discussion whatsoever about *Zinermon* and the §1983 theory established by that case and cases cited therein upon which plaintiff has presented his §1983 claim. The Ninth Circuit refuses to accept the truth, and therefore its published opinion is frivolous.

Zinermon authorizes §1983 claims where the question is ***the way state law is or is not implemented by state officials;*** where a state remedy, though adequate in theory, ***was not available in practice.*** As to the supposed contradiction noted by the opinion, reliance by this court is placed on the ambiguity of the phrase "state procedures themselves are fundamentally flawed" (footnote 6 of the Choy opinion). However, the meaning in the brief's context is quite obvious that "state procedures themselves" could only refer to those procedures ***as they were carried out***, i.e., as they were or were not implemented by defendants (state officials sued in their personal capacities). Grappling at a single supposed contradiction, which is at best only an ambiguity in wording which can easily be ascer- tained by its context, cannot be the basis in law that deprives the federal court of its requirement to take jurisdiction. No one reading the transcript from the trial court or any of the briefs on appeal could possibly mistake what is the real issue argued before the federal court. As plaintiff states, the complaint is based on "specific articulable violations

of procedural due process by the particular defendants named." (See Opinion, fn.6). Page 4 of the Reply Brief goes on to state "Each state official is sued in his personal capacity and each violation is described as 'acting *ultra vires* state authority and under color and pretense of state law.' ...That alone proves the ***falsity*** of counsel's statement that plaintiff is making a 'general attack' on the California

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appellate system." The complaint alleges that two issues on appeal in the state system were never considered or decided-- there is absolutely no decision or judgment thereon, for plaintiff didn't receive the state remedy *by practice*. The state court decision is irrelevant in considering that omission in procedure. The state decision isn't reached in this procedural due process claim. That's the distinction which the Ninth Circuit, in covering up for the state judges, is refusing to recognize. It would rather throw up the artificial barrier of *Feldman* in this case in order to ***block a federal remedy*** after already having been deprived of a state remedy. The purpose of injunctive relief in federal court is thereby defeated by judicial fiat.

"Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments." *37 Am.Jur2d "Fraud and Deceit" §8.*

Dated: August 14, 1995

RONALD BRANSON, Plaintiff/Appellant

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EXCEPTION TO DENIAL OF PETITION FOR REHEARING
(Minus Exhibits)

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55332

RONALD BRANSON

Plaintiff and Appellant

vs.

MICHAEL G. NOTT, personal capacity; MORIO L. FUKUTO, personal capacity; RAY L. HART, personal capacity; JERRY K. FIELDS, personal capacity, ESTELLA GUEVARA, personal capacity; ZAHAVA STROUD, Attorney at Law; MORRIS, POLICH & PURDY, a licensed lawfirm,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable EDWARD RAFEEDIE, District Judge
No. CV 93-5967-ER

EXCEPTION TO DENIAL OF PETITION FOR REHEARING

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

EXCEPTION TO DENIAL OF PETITION FOR REHEARING

Petitioner, RONALD BRANSON, who is referred to herein as "plaintiff" to conform to the record, hereby submits his Exception to the summary denial of his Petition for Rehearing filed 8/30/95, by Circuit Judges CHOY, SKOPIL, and FERGUSON, a copy of which denial is attached hereto for reference. This Exception goes beyond the scope of an "objection" and is not to be considered as an objection. The purpose of this Exception is to set the record for future action that may be taken relating to this case.

Also attached hereto for reference is a copy of the Petition for Rehearing including the Preliminary Statement thereto which is crucial in this matter. Therein Circuit Judges CHOY, SKOPIL, and FERGUSON, as well as opposing counsel, members of Congress, the Judicial Conference of the United States, and the U.S. Supreme Court, were placed on notice that there is currently pending before the U.S. Supreme Court a Petition For Writ of Certiorari, No. 94-1956, regarding several improprieties of the Ninth Circuit Court of Appeal ("C/A") and the failure and refusal of the C/A to identify and address those improprieties brought by motion under Title 28 U.S.C. §455(a).

The above-mentioned judges, officials, and interested parties were also placed on notice by the Preliminary Statement of the relationship of that pending petition, USSC No. 94-1956, to the instant appeal USCA No. 94-55332 by the following: "Ever since plaintiff placed this court's impartiality formally into question, it was legally required to recuse itself in that case (94-55951). Ethically and morally it should remove itself from ***any further handling of plaintiff's cases-- including this one.*** But, of course, it won't because it is <u>in fact</u> partial as is evidenced by its conduct. The Ninth Circuit Court, as a leopard, is as incapable of changing its spots for this particular case as it could for any other case involving plaintiff in the future. When the Ninth Circuit affirmatively refused to recuse itself on 12/9/94 in Case No. 94-55951, it effectually 'declared war' upon plaintiff. In publishing the instant decision, it determined to make its declaration of war against plaintiff open for all the world to see. Plaintiff <u>cannot any longer</u> (since 12/9/94)

expect fair and impartial treatment by the Ninth Circuit in <u>any</u>

case." (Prel.Stmt pp ii, iii). [Emphasis in original].

By the foregoing, particularly, Circuit Judges CHOY, SKOPIL, and FERGUSON were placed on notice that the questioning of the impartiality of the C/A, still pending before the U.S. Supreme Court, ***extends to this case as well*** for the reasons stated in the Preliminary Statement, and therefore were required to recuse themselves and the C/A in this case. However, as stated, "it won't because it is <u>in fact</u> partial" and, "as a leopard, is as incapable of changing its spots for this particular case as it could for any other case involving plaintiff in the future."

The Order filed 8/30/95 setting forth "The petition for rehearing is DENIED" is but another utterance from the same "leopard" whose integrity is already under question before the U.S. Supreme Court and Congress. As plaintiff stated in his conclusion of USSC No. 94-1956: "Courts must be made to expand their vocabulary beyond the word 'denied.'" (*Id.* p.29). Nothing has changed--***nothing has been resolved!***

<u>PLEASE NOTE:</u> In printing out the Petition for Rehearing, a phrase was inadvertently omitted from page iv of the Preliminary Statement, 7th line, to wit, "...render the default judgment which was due by clear and unequivocal state law-- ...".

Dated: September 2, 1995

RONALD BRANSON, Plaintiff/Appellant

REPORTER'S TRANSCRIPT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING

- - - - - -

RONALD BRANSON,

PLAINTIFF,

VS. CASE NO. CV-93-5967-ER

MICHAEL G. NOTT, ET AL.,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, JANUARY 31, 1994

MARY TUCKER, CSR 9308
OFFICIAL COURT REPORTER
429-D U.S. COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIF. 90012
213/ 687-0530

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APPEARANCES:

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FOR DEFENDANTS STROUD, MORRIS, POLICH & PURDY
HON. JERRY FIELDS, ESTELLA GRAVARA: *[sic]*
ZAHAVA STROUD
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FOR DEFENDANTS FUKUTO, HART & NOTT:
CHRISTOPHER FOLEY
DEPUTY ATTORNEY GENERAL
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LOS ANGELES, CALIFORNIA; MONDAY, JANUARY 31, 1994
(10:00 A.M.)

The Clerk: Item number four, Civil 93-5967, Ronald Branson v. Michael G. Nott, et al.

Counsel, please state your names for the record, please.

Mr. Branson: Ronald Branson, the plaintiff, in his own behalf.

Ms. Stroud: Good morning. Zahava Stroud representing myself, my law firm, Morris, Polich & Purdy; Judge Jerry Fields; and Court Clerk, Estella Gravara. *[sic]*

Mr. Foley: Good morning, your Honor. California Attorney General by Christopher Foley for defendants Morio Fukuto, Ray Hart, and Michael Nott, Justices of the Court of Appeal of the Second Appellate District.

The Court: This is a motion by the defendants Nott, Fukuto, and Hart to dismiss under section 12(b), and defendants Stroud, Morris, Polich & Purdy, Field and Gravara *[sic]* to dismiss under section 12(b), and a request for sanctions.

You are acting on your own behalf; is that correct, sir?

Mr. Branson: That is correct, your Honor.

The Court: The court has read and considered all of the papers submitted in this matter, and tentatively

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concludes as follows: The court finds that the plaintiff's claim for violation of section 1983 must be dismissed as barred by the statute of limitations.

The Supreme Court has stated that all civil rights 1983 actions are personal injury actions subject to the state statute of limitations, in a case called Wilson v. Garcia, 471 U.S. 261, in 1985. The state statute of limitations applicable is one year under California Civil Procedure Code, section 340.3.

The statute of limitations does not begin to run on a conspiracy claim until the last overt act has been committed.

In this case, the last act which is alleged to have been committed by any of the defendants is Judge Nott's decision affirming the district *[sic]* court's dismissal of plaintiff's state law case. This occurred on February 19, 1992. The statute ran on February 19, 1993. The complaint was not filed until October of 1993.

The fact that you had petitioned the Supreme Court for certiorari does not change that. It does not extend the time within which you must file.

Now, the Supreme Court allows the imposition of attorney's fees to a prevailing defendant in a civil rights case, if the plaintiff's action was frivolous, unreasonable, or without foundation, even though not

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brought in subjected *[sic]* bad faith.

The court finds that the plaintiff is abusing the judicial system to harass individuals, rather than to prosecute a claim in good faith. Accordingly, the court intends to award the attorney's fees that have been requested in this case, in the amount of $3,645.

Did you wish to be heard on this?

Mr. Branson: Yes, I do, your Honor. First off--

The Court: Let me say, there are a number of other reasons

why your case should be dismissed, including judicial immunity, many of these defendants are judges --

Mr. Branson: I could address each one of those. First of all, she is arguing that the conspiracy is an individual cause of action, and it is not. It is the completion of the whole matter that had to be exhausted. And I refer to Zinermon v. Birch. *[sic]*

The Court: Tell me what this conspiracy is that you are alleging?

Mr. Branson: Okay. I made a 581(f)(2) dismissal, motion for dismissal, under the Code of Civil Procedure, which the judge is required by law to grant. They had-- he had ruled on a demur *[sic]* submitted by them, and he ordered me to amend the--

The Court: The judge ruled wrong?

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Mr. Branson: This is not a question of ruling at all. Nothing to do with his ruling whatsoever.

I'm saying, the law requires him upon a motion under 581(f)(2) to dismiss the case when so petition *[sic]* by the plaintiff.

Now, what happened was, the defendant over here conspired with the judge in saying, "Your Honor, we would prefer that you would hold his motion off until our motion to be heard on failure to prosecute is brought up at a later date."

And I objected to that, and of course, they conspired together and agreed that they would wind up doubly dismissing the case.

And I believe this court understands well enough to know you cannot sustain a demur, *[sic]* and then turn around and say you didn't prosecute the case; and that's exactly what they did. And the two of them worked together, and it was completed--

The Court: This is judicial error, if true.

Mr. Branson: Okay. One could say it was judicial error in that it could be reviewed on appeal, but the process did not work. The point is--

The Court: What is the process that did not work? You appealed?

Mr. Branson: I took an appeal on that matter.

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The Court: And the judge–

Mr. Branson: On the appeal, they were offered two options. One was one with the conspiracy, and the other one was by law. And the one that was by law was never heard; so I was– I never received a process.

The Court: Your appeal was denied, wasn't it?

Mr. Branson: No. There no *[sic]* denial of the appeal. I'm saying–

The Court: What happened to it?

Mr. Branson: Well, what I appealed on just never took place. What the appeal decision was, is what the conspiracy was. You can't dismiss a case for failure to prosecute and have the underlying case ruled on a demur *[sic]* on the basis of law. The only issue that they could rule on is: Did I have a cause of action according to law? That's the only thing they could rule on, but the process never took place.

The Court: You are suing the appellate court judges too, aren't you?

Mr. Branson: Yes, I am.

The Court: What did they do that warranted–

Mr. Branson: I'm saying that the process that was due, which is an appeal, did not happen. I never got an appeal on the issue that I appealed on. It didn't happen. I was denied process *[sic]* of law, and that's what the grievance

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is in this federal court.

Again, I would like to refer here that in the Zinermon case, referring to Monroe, it talks about that the cause of action here is to provide a federal remedy "where the state remedy, though adequate in theory, was not available in practice." That's exactly what happened. It is available in theory, but it doesn't work.

It's not available in practice. It is no answer that the state has a law, which enforced, would give relief. So the law is okay. I have no problem with the law. The problem is, it doesn't work. It just doesn't happen.

The Court:. All right. That's enough argument.

Mr. Branson: If I just might address this question of--

The Court: No, you may not. That's enough.

The case is dismissed with prejudice, and the plaintiff is ordered to pay attorney's fees in the sum of $3,465 to the law firm of Morris, Polich and Purdy--

Mr. Branson: Your Honor, just--

The Court: --for having to respond to this--

Mr. Branson: I would also like to state that the motion made by the Attorney General is not even an adequate motion under rule seven. It says it shall be made upon declaration, and it's not even--there is no declaration

--it is not even a proper motion, and the rule said, "The court will not hear the motion."

Now, as far as the ruling on the court, I would like to, for the record, place my objection thereto and take exception thereto.

The Court: Well, that's fine, but don't sue me.

Ms. Stroud: Excuse me, your Honor. I would like to bring to your attention that Mr. Branson filed a separate motion for sanctions against myself and Mr. Foley, which is set for hearing next Monday, February 7. I would request that motion be taken off calendar to save us further time and expense on litigating this claim.

The Court: That would not be appropriate. It will stay on calendar, but you may anticipate the ruling.

Ms. Stroud: Thank you.

Mr. Foley: May we omit the appearance, your Honor?

The Court: Yes. The matter can be a nonappearance, and the court will rule on the papers that have been filed.

Ms. Stroud: Thank you.

Mr. Foley: Thank you, your Honor.

Mr. Branson: That's as to the motion for next week you are talking about?

The Court: Yes.
Mr. Branson: It will be submitted on the paper?
The Court: Yes.
Mr. Branson: Thank you, your Honor.
The Court: All right.
(proceedings adjourned.)

* * * * * * * *

I, MARY TUCKER, CSR, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS TRUE AND CORRECT.

(signed)_____ 3/22/94
MARY TUCKER, CSR DATE

STATEMENT FOR ORAL ARGUMENT ON APPEAL

RONALD BRANSON
10853 White Oak Ave.
Granada Hills CA 91344
(818) 446-8356

Plaintiff and Appellant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON, Plaintiff and Appellant, v. MICHAEL G. NOTT, personal capacity; et al., Defendants and Appellees.	No. 94-55332 STATEMENT FOR ORAL ARGUMENT ON APPEAL (Cir.R.34-4.)

Appellant RONALD BRANSON presents this statement in favor of oral argument on appeal pursuant to Ninth Cir. Rule 34-4 on the following reasons:

The record on appeal in this case abundantly shows that both sides are vigorously engaged in unresolved factual disputes that must be heard. Appellant's Reply Brief especially brings the disputed status of this case into focus, expressing the need to have the many disputes presented in this case adjudicated on the facts and evidenced. These disputes include, but are not limited to, (1) Whether plaintiff's claims have been previously litigated; (2) Whether plaintiff's lawsuit is stale and meritless; (3) Whether plaintiff abandoned or waived his claim against defendant

GUEVARA; (4) Whether the theory of plaintiff's case was established as a matter of law; (5) Whether plaintiff is attacking a state court judgment, seeking to review a state court decision, or seeking federal injunctive relief for violations of procedural due process; (6) Whether plaintiff's case is a conspiracy claim or a procedural due process claim; (7) Whether plaintiff is making a general attack on

BEST AVAILA

the California appellate system, or a specific attack on the failure of these particular defendants to properly implement state laws on the books; (8) Whether plaintiff is attacking the adequacy of procedure in theory or the availability of procedure in practice; (9) Whether it was established as a matter of law that plaintiff's case is barred by the statute of limitations; (10) Whether there were procedural prerequisites such as exhaustion of state remedies, seeking review in the U.S. Supreme Court under §1257, etc. before bringing the case to federal court; (11) Whether such prerequisites, if required, were met; and if so, as of what date they were met; (12) Whether it is necessary to allege that the California or U.S. Supreme Court partook in the alleged conspiracy to deprive of due process; (13) Whether plaintiff is seeking the same concerns in federal court as he sought in state court; (14) Whether the complaint was properly dismissed based on the facts alleged in the complaint; (15) Whether plaintiff's filing of the complaint is frivolous and an abuse of the judicial process; (16) Whether sanctions of any kind are warranted against plaintiff; (17) Whether the district court based its decision on the face of plaintiff's complaint or instead relied on facts presented in the record; (18) Whether the district court relied only on undisputed facts or in addition made

certain factual determinations; (19) Whether the district court acted on the motions before it, and if so, precisely which one; (20) Whether the district court's order is supported by facts and law, and if so, what are they.

At no time have the defendants or the district court addressed or even attempted to address the case set forth by the complaint. Oral argument before the district court was absolutely meaningless; the judge ignored everything plaintiff argued, trying to throw him off track from the real issue, getting into matters that would be the subject of discovery during litigation. See Brief for Appellant (BFA) 23:26 - 24:10; 27:4 - 28:6; 30:14-15; 31:9-15; 32:1-2. Furthermore, plaintiff was not permitted to argue the statute of limitations issue nor the frivolous filing of his complaint and abuse of the judicial process issues, the judge ordering that no further argument was to be offered or heard. See Reporter's Transcript 8:13; also BFA 2:19-22; 3:10-12.

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Oral argument on appeal is particularly important since, in addition to having his case arbitrarily thrown out by the district court without supporting evidence, the judge sanctioned plaintiff $3,500. Plaintiff asks for a hearing to show that not only does he have a viable and timely complaint, but also to show that neither of the attorneys have a viable defense to the complaint. The smoke should be allowed to be blown away in this case, to show their arguments are seriously lacking.

Dated: September 17, 1994

RONALD BRANSON, Appellant

PLAINTIFF'S DECLARATION RE IN-LIMBO STATUS
(minus exhibits)

(Regarding *Branson v. Haber*, USDC No. CV-92-03544-LGB; USCA No. 93-56696; USSC No. 94-610)

RONALD BRANSON
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Msg. phone (818) 446-8356

Plaintiff, Pro Se

FILED
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CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF
LOS ANGELES
BY:_____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD BRANSON, Plaintiff, v. ALAN B. HABER, Defendant.	No. CV 92-3544 LGB(EE)x PLAINTIFF'S DECLARATION: (1) GIVING NOTICE OF IN-LIMBO STATUS (NO LEGAL CONCLUSION) OF THIS FEDERAL CASE, (2) GIVING NOTICE OF NON-WAIVER OF RIGHTS UNDER THE U.S. CONSTITUTION AND LAWS OF THE UNITED STATES, (3) GIVING NOTICE OF RIGHT TO PURSUE FURTHER ACTION.

I, RONALD BRANSON, declare and say:

1) That I am plaintiff in the above-entitled action. That the facts herein stated are personally known to me to be true and that I could competently testify thereto if called upon as a witness to do so. That other matters of a conclusory nature herein stated are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

PLEASE TAKE NOTICE OF THE FOLLOWING:

2) ***That I have been deprived of a judicial remedy according to law in this federal action by the federal judicial process*** as of November 28, 1994, when the U.S. Supreme Court denied my petition for writ of certiorari, a copy of which denial is attached hereto as "EXHIBIT A" and made a part hereof.

3) That I do not now waive, nor have I ever at any time waived, my right to a federal judicial remedy in this case, USDC No. CV 92-3544-LGB(EE)x, for federal injunctive relief as Congress intended under Title 42 U.S.C. §1983 as alleged in the complaint filed herein June 12, 1992, for the deprivation by state action of my constitutionally protected interest in life, liberty and property ***without due process of law.***

4) That attached hereto as "EXHIBIT B" and made a part hereof is a copy of my petition to the Supreme Court, minus the appendix, which presented the following question:

> ***"Whether the U.S. Supreme Court should now intervene and address for the first time in this case petitioner's protected liberty and property interests created by California Code of Civil Procedure Section 585 subdivision (b) in order to determine the need for federal injunctive relief."***

5) That by denying the petition, the final court responsible for seeing that a federal remedy is provided elected to decline to address this question, allowing not only the underlying state case, but also this case for federal injunctive relief, to remain forever suspended in limbo without addressing the federal question.

6) That I alleged that on October 8, 1991, seven weeks after state judge Haber, defendant in this federal case, had taken my prove-up evidence under submission for default judgment on August 21, 1991, he ***removed that evidence from submitted status,*** in violation of California Code of Civil Procedure §585(b) which mandates the judge render default judgment in plaintiff's favor after such submission in accordance with the evidence.

7) That after research on the matter, I have no knowledge of any authority under California law for the state judge to remove evidence from submitted status once taken under submission for judgment, nor does he cite any for so doing in this federal suit. That as

the record shows, he raises no defense to this allegation, nor does he have one.

8) That had there been any authority under California law to remove my evidence from submitted status *at any time* after submission for judgment under CCP §585(b), I would have *objected* to the court submitting it at all and would have insisted on *immediate judgment* so as not to compromise my right

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to that judgment. That it was then, and is now, my understanding that *submission of evidence* is for the convenience and benefit of the court in rendering a sound judgment-- not to in any way destroy rights existing at the time of submission.

9) That it is such *removal of evidence* in violation of CCP §585(b) which I have alleged deprives me of a constitutionally protected interest in life, liberty and property *without due process of law* which is the federal violation, i.e., *the federal question in this case,* that has not been addressed by the federal courts throughout all stages of this federal litigation.

10) That I cited *Wright's Federal Procedure* on page 16 of my petition "Cases arising under the due process protection of interests in liberty and property provide the richest examples of special need for the Supreme Court to protect rights created by state law" but nevertheless that special need has gone unheeded.

11) That because of the close-out of access to the federal adjudicatory process to the adversary proceedings contemplated by the Federal Rules to which I am entitled, as discussed in *Neitzke v. Williams* (1989) 490 U.S. 319, 330, I was forced to take the entire case to the U.S. Supreme Court to receive the process due-- and is still due to this day.

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12) That I concluded my U.S. Supreme Court petition by saying that the record shows the federal judicial process in this case is a sham and a mockery of justice; that it is treason against the Consti- tution of the United States as the Court illustrated in *Ex parte Young* (1908) 209 U.S. 123, 143; that I now call upon the High Court to act upon its "well settled, established practice" regarding federal injunctive relief, and make available the "remedy to make good the wrong done" and that to do so, the "wrong done"

must be discussed and decided by the federal judiciary which hasn't been done to date.

13) That until my rights under California Code of Civil Procedure Section 585 subdivision (b) are determined, there is no legal conclusion to this federal case nor to the underlying state action; that I have abundantly cited facts from the record and supporting law throughout this case and that I continue to rely on the record.

14) That I reserve my right to seek whatever additional action may be necessary by further remedial action in the federal judicial system, by remedial redress to Congress, and by public exposure of the mockery of constitutional due process and the acts of treason by the judiciary as established by the evidence on record.

15) That this federal case is developing a similar pattern of federal judicial misconduct as Case No. 94-80469 currently before the Judicial Council of the Ninth Circuit Court of Appeals under Title 28 U.S.C. §372(c).*

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 12th day of January, 1995, at Los Angeles, California.

(signed)_____
RONALD BRANSON, Plaintiff/Declarant

* Chief Judge Wallace dismissed the complaint on 5/24/95 without addressing the judicial misconduct raised; dismissal was affirmed on 7/20/95 by the Judicial Council (Hug, Brunetti, Leavy and Fernandez, Circuit Judges; and Coyle, Kay, Keep and Byrne, District Judges). There is now pending before Circuit Judge Browning a new complaint (No. 95-80215) since 6/26/95 against Chief Judge Wallace for having failed to address the misconduct presented in the previous complaint.

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

U.S. Constitution:

Article III, Section 2, Clause 2: In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Due Process Clause, Fourteenth Amendment: ...[N]or shall any state deprive any person of life, liberty, or property, without due process of law; ....

Federal Statutes:

28 U.S.C. §455(a): Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. §1343(a)(3): (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

28 U.S.C. §1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

42 U.S.C. §1983 (pertinent part): Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress....

Code of Conduct for United States Judges: September 22, 1992 (pertinent parts)

Canon 1: A Judge Should Uphold The Integrity And Independence Of The Judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. ¶COMMENTARY: Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law. ¶The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making decisions....

Canon 2: A Judge Should Avoid Impropriety And The Appearance Of Impropriety In All Activities. A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. .... ¶COMMENTARY Canon 2A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. ¶The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful al-

though not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

Canon 3: A Judge Should Perform The Duties Of The Office Impartially And Diligently. The judicial duties of a judge take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards: **¶A. Adjudicative Responsibilities.** ¶(1) A judge should be faithful to and maintain professional competence in the law,.... ¶(4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding. A judge may, however, obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.... ¶(5) A judge should dispose promptly of the business of the court.

¶C. Disqualification. ¶(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned,.... **¶¶COMMENTARY Canon 3A5.** In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. ....

Rules of the Judicial Council of the Ninth Circuit:

Rule 1(a): Purpose of the Procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges engage in conduct that does not meet the standards expected of federal judicial officers or when

judges are physically or mentally unable to perform their duties. The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

* * *